TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 894

J. F. LAWRENCE, C. C. TAYLOR, EDWIN DABNEY, ATTORNEY GENERAL, ETC., ET AL, APPELLANTS,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED FEBRUARY 19, 1927

(32,461)

(32,461)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 894

J. F. LAWRENCE, C. C. TAYLOR, EDWIN DABNEY, ATTORNEY GENERAL, ETC., ET AL., APPELLANTS,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OKLAHOMA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 7, 1927

[fol. 1]

IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OKLAHOMA

No. 207 E

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Plaintiff,

vs.

J. F. LAWRENCE, C. C. TAYLOR; EDWIN DABNEY, Attorney General of the State of Oklahoma; Frank C. Carter, Fred Capshaw, and C. C. Childers, Individually and as Members of the Corporation Commission of the State of Oklahoma, Defendants.

BILL OF COMPLAINT—Filed January 11, 1927

To the Honorable Judge of the District Court of the United States for the Northern District of Oklahoma:

The St. Louis-San Francisco Railway Company, plaintiff, a corporation created and organized under and by virtue of the laws of the State of Missouri, having its principal place of business at St. Louis in said State of Missouri, brings this bill of complaint against J. F. Lawrence and C. C. Taylor and Edwin Dabney, Attorney General of the State of Oklahoma, and Frank C. Carter, Fred Capshaw and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and thereupon plaintiff alleges and states:

I

That the St. Louis-San Francisco Railway Company is a corporation duly organized under and by virtue of the laws of the State of Missouri, with its principal place of business in the City of St. Louis, in said State, and is a citizen and resident of the State of Missouri, and is not a citizen or [fol. 2] resident of the State of Oklahoma, and that said railway company is authorized, as provided by law, to transact business in the State of Oklahoma; that its rail-

road is engaged in both intrastate and interstate commerce, and that it operates such railroad in the States of Missouri, Kansas, Arkansas, Oklahoma, Texas, Mississippi and other States, and that for many years it has owned and operates lines extending from Kansas City and St. Louis, by continuous lines, to and through the State of Oklahoma, and through the City of Sapulpa, located in said State of Oklahoma and the Northern Federal Judicial District thereof.

II

That Edwin Dabney is a citizen and resident of the State of Oklahoma and the Western Federal Judicial District thereof, and is the duly elected, qualified and acting Attorney General of the State of Oklahoma; that Frank C. Carter, Fred Capshaw and C. C. Childers are citizens and residents of the State of Oklahoma, and of the Western Federal Judicial District thereof, and are the duly elected, qualified and acting members of the Corporation Commission of the State of Oklahoma; that J. F. Lawrence and C. C. Taylor are citizens and residents of the State of Oklahoma and the Northern Federal Judicial District thereof, living in the said City of Sapulpa in said Northern Federal Judicial District.

III

That the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of $3,000.00, and that plaintiff's cause of action as hereinafter shown arises under the Constitution and laws of the United States, and especially under Section 8, Article 1 of said Constitution, which provides in substance that the Congress of the United States shall have power to regulate commerce among the several states, and under the Fourteenth Amendment to said Constitution, which provides that no state shall deprive any person of his property without due process of law nor deny that person the equal protection of the laws.

[fol. 3]

IV

That during the month of February, 1917, defendants, J. F. Lawrence and C. C. Taylor, appearing on behalf of themselves, the Chamber of Commerce of the City of

Sapulpa, and the citizens of said City of Sapulpa, filed complaint with the Corporation Commission of the State of Oklahoma, which had for its purpose the prevention of this plaintiff from moving its said shops and division point from the City of Sapulpa to the City of Tulsa on its said line of railroad; that thereafter and on the 15th day of February, 1917, Order No. 1232 was issued by the Corporation Commission of the State of Oklahoma, temporarily restraining plaintiff from moving its said shops or division point from the City of Sapulpa to the City of Tulsa, or doing any act relative thereto; that on the 29th day of December, 1926, upon application of said defendants, J. F. Lawrence and C. C. Taylor, appearing for themselves and for the Chamber of Commerce of the City of Sapulpa and for the citizens of said City, the Corporation Commission of the State of Oklahoma made and caused to be served upon this plaintiff Order No. 3699, which reads as follows:

"This cause coming on to be heard on this 29th day of December, 1926, upon motion of the complainants, and it appearing that the defendant is taking steps toward the removal of its shops and division point from the City of Sapulpa in violation of the order of this Commission entered on the 5th day of February, 1917, and in violation of the Act of the Legislature passed in 1917, it is ordered by the Commission that said cause be set down for hearing on the 17th day of January, 1927, and that in the meantime, and until the further order of the Commission, the defendant be, and it is hereby prohibited from moving its shops or division point from the City of Sapulpa, from changing the runs of either its passenger or freight trains, or from taking any other steps towards changing its division point for either passenger or freight service from the said City of Sapulpa.

"It is further ordered that a copy of this order be served on the defendant.

"Done at Oklahoma City, Oklahoma, on the date first above named."

That a hearing on said complaint filed by said defendants as set forth in said order, is set before the Corporation Commission of the State of Oklahoma for the 17th day of January, 1927.

V

[fol. 4] That the Statute of the State of Oklahoma referred to in the above named order as "the Act of the Legislature passed in 1917", and all the Statutes of the State of Oklahoma relied upon by said defendants for the jurisdiction of said Corporation Commission in said action, are contained in Compiled Oklahoma Statutes, 1921, as follows:

"3482. Removal—Permit.—That no person, receiver, firm, company or corporation owning, operating or managing any line of steam railroad in this State shall be allowed to remove railroad shops or division points which have been located at any place in this State for a period of not less than five years without previously securing the permission of the Corporation Commission to make such removal.

"3483. Corporation Commission—Jurisdiction.—If, and when any such person, receiver, firm, company or corporation desires to remove any such railroad shops or division point described in Section One of this act, it shall be his duty to file an application with the Corporation Commission setting forth the present location of such shops or division point and the reasons for such removal, and thereupon the Corporation Commission shall have full power and jurisdiction to entertain such complaint, but before hearing the same or making any order permitting such removal to be made, said cause shall be set down for hearing, not less than ten days' notice shall be given the city, town or village in which or at which such shops or division point have been maintained and after giving all parties interested a full and complete hearing in the premises the Commission may in its discretion permit or refuse such request for a removal.

"3484. Hearing—Before Corporation Commission.—When an application is filed before the Commission for the removal of terminals or car shops, as provided in Section Two, the Commission shall hear evidence on the relative efficiency and expense of handling traffic through the proposed terminal as compared with the present facilities, and shall consider all other facts and circumstances affecting the various interests involved. In determining the ade-

quacy of the present facilities the Commission shall consider the same increased by an expenditure equal to an amount necessary to remove the same to the proposed location or an amount equal to the necessary expenditure to establish such facilities at the new location. It is hereby further provided that the Commission shall hear evidence and shall make a finding of fact as to the sanitary and habitable conditions of the proposed location with reference to whether the same would endanger the health of the employees of the applicant or the health of their families. If the Commission should find that the sanitary or habitable conditions at the proposed location of said terminal facilities would endanger or injuriously affect the health of the employees of said applicant or their families, the Commission shall deny said application and order the said terminal facilities and car shops to remain at the present location.

[fol. 5] "3485. Proof—Burden Upon Applicant.—On any such hearing, as provided in this act, the presumption shall be against the removal, and the burden of proof rest upon the applicant to show that such removal ought to be made.

"5548. Transportation Companies Must Maintain Repair Shops in State.—Transportation companies operating within this State which now have in existence round-houses or machine shops for the repairing of locomotives, engines, and cars, or which may hereafter establish such round-houses or machine shops for such purpose, shall hereafter maintain such shops and round-houses with sufficient equipment and employees to keep in proper repair all rolling stock, locomotives, engines, and cars used within this State in the transportation of passengers and freight and such transportation companies shall hereafter cause all such rolling stock, locomotives, engines and cars to be repaired at such shops or round-houses and kept in a safe and serviceable condition and no such repair shall be done outside the State of Oklahoma, if such repairs can be done at such company's shops within this State."

VI

Premises considered, plaintiff complains of such jurisdiction and injunctive action on the part of said Corporation Commission, because the foregoing Statutes upon

which the Commission seeks to base its jurisdiction are unconstitutional and void, and said Commission therefore is without power to act under said Statutes, in that they are not a proper exercise of the police power of the State and deprive plaintiff of due process of law and of equal protection under the law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Plaintiff shows to the court that such Statutes are arbitrary, unreasonable and unnecessary, because neither the shipping public, the traveling public nor the public at large has any interest in the place where railroad shops or division points shall be located on said railway company's lines; that the location of said shops or division point does not serve to protect the public morals, the public safety or the public health, and the right of the State of Oklahoma to enact such Statutes cannot be traced or referred to any legitimate or well known source of police power. Such Statutes are arbitrary, unreasonable and unnecessary, and are an un- [fol. 6] due and unconstitutional interference with the right of a railway company to manage its property and operate it for the best interests of the public and the stockholders of such company, and to operate the same economically, which, by law, it is required to do, and at the least expense necessary to serve the public, and are, therefore, an invasion of the rights of such company prohibited by law and the Constitution of the United States as aforesaid.

VII

That said Statutes are unconstitutional for the further reason that said sections show on their faces that they were enacted purely to serve local interests and not to serve the public, and this regardless of whether they injuriously affect the property of the railway company and interfere directly with interstate commerce.

VIII

Plaintiff says that said sections of the Statutes, taken together, declare that if division points or shops have been located in any particular place in the State of Oklahoma for a period of five years, the presumption against the right

of removal shall obtain against the railway, and that the burden of proof shall be upon the railway. Plaintiff says that such provision in such sections is unconstitutional in that it is an arbitrary exercise of police power; that the five-year period as announced in said provision has no just relation to the proposition as to whether the right of removal exists and that the change in the rules of evidence by virtue of said five-year period is unconstitutional, in that it deprives the plaintiff of its property without due process of law and of the equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States. Plaintiff, therefore, alleges that the Corporation Commission aforesaid has no power or jurisdiction to act in the premises under said unconstitutional Statutes, nor to issue its injunctive process against this plaintiff prohibiting it from removing its shops, division point and appurtenances thereto from the said City of Sapulpa, with-
[fol. 7] out obtaining the consent of such Commission.

IX

Plaintiff further says that said Statutes are unconstitutional, void and of no effect for the reason that same purport to grant to the Corporation Commission authority to decide questions relative to, and to directly regulate, interstate commerce, and that if said Corporation Commission is given such authority by said Statutes in said proceedings pending before said Commission, such decision will, in effect, regulate the interstate commerce business of this plaintiff.

X

Plaintiff further shows to the court that said Statutes are unconstitutional, void and of no effect in so far as same are applicable to said purported action pending before the Corporation Commission of the State of Oklahoma, for the reason that the question as to whether or not plaintiff be permitted to remove its shops and division point to the City of Tulsa, or be compelled to continue said shops and division point at the City of Sapulpa, is, by reason of the facts hereinbefore related, one directly affecting interstate commerce, and a decision of said question by said Corporation

Commission will be a direct regulation of interstate commerce, and if said removal is prevented by the order of said Corporation Commission, then said order will be a direct burden upon and a direct regulation of and interference with interstate commerce.

XI

That on or about the 1st day of January, 1927, plaintiff prepared and published its train schedule, changing the run of certain of its interstate passenger trains operated by defendant for the purpose of carrying interstate passengers, interstate express and interstate United States mail, by providing therein that said trains run from Oklahoma City to Tulsa and change crews at Tulsa, and from Fort Scott, Kansas, to Tulsa, and change crews at Tulsa, and from Monett, Missouri, to Tulsa, and change crews at Tulsa; that said schedule was prepared and published by [fol. 8] plaintiff after mature study and deliberation in an effort to promote, change and regulate its interstate commerce business. Plaintiff says that said schedule, if put into effect, will greatly facilitate and promote the interstate commerce business transacted by plaintiff; that owing to the increase in business transported over plaintiff's line of railroad and the recent change in the equipment and motive power used by plaintiff and the improvement thereof, and owing to a general scheme recently adopted by plaintiff with relation to its interstate commerce business involving changes in the location and even the elimination of various division points throughout plaintiff's system of railway in the States of Missouri, Kansas, Oklahoma, Texas and other States, it has become necessary and imperative to the proper conduct of plaintiff's interstate business that said changes in said runs be made; that the order of the Corporation Commission hereinafter referred to prevents plaintiff from putting into effect its said schedule with reference to its said interstate trains, and is a construction by the Corporation Commission of the above named Statutes to the effect that said Statutes grant to said Commission the power and duty to regulate interstate commerce.

XII

Plaintiff says that the restraining orders heretofore issued by said Corporation Commission as hereinbefore set forth are void and of no effect for the reason that said orders attempt to regulate and interfere, and do regulate and interfere with the running of interstate trains; that said orders interfere with this plaintiff materially in the management and operation of its said interstate trains, and are unreasonable, unnecessary and constitute a burden upon interstate commerce and are unconstitutional and void.

XIII

Plintiff would further show to the court that the above named Statutes as construed by the Corporation Commisson of the State of Oklahoma, in their application to the questions herein involved, are unconstitutional, confiscatory [fol. 9] and void by reason of the particular facts applicable to this case. In this connection plaintiff would show to the court, as follows:

(a) That more than thirty years ago the St. Louis & San Francisco Railroad Company built and acquired lines of railroad extending from the cities of St. Louis and Kansas City to Afton, Oklahoma, at which point said lines of railroad united and extended in a single line in a southwesterly direction into the State of Oklahoma and the cities of Tulsa and Sapulpa in said State, and thereafter built lines of railroad extending south from the said City of Sapulpa into the State of Texas to the City of Sherman in said State, and a line of railroad extending west from said City of Sapulpa, through Oklahoma City, Lawton and to the City of Quanah in the State of Texas; that owing to the character of the roadbed constructed by said railroad company and the character of motive power and equipment at said time necessarily used by said railroad company, it became and was necessary and convenient in the transaction of the business of said railroad company that division points be located on said railroad at a distance of not to exceed one hundred miles from each other; that owing to the relative size of the different cities through

which said lines of railroad passed, and owing to the fact that at the times of the construction of said lines of railroad as heretofore described, said railroad company received a large volume of its business from the vicinity of Sapulpa, and owing to the further fact that it appeared to those having to do with the construction of said lines of railroad at said times that the City of Sapulpa would become the business shipping center of its locality, said railroad company located, built and constructed at the said City of Sapulpa certain railroad shops and a division point on said lines of railroad, and that said shops and division point have since been maintained and operated at the said City of Sapulpa.

(b) That heretofore and on the 1st day of November, 1916, this plaintiff became the owner by purchase of the above named lines of railroad and railroad shops and has [fol. 10] since owned and operated same.

(c) That although from the conditions existing at the time of the construction of said lines of railroad it appeared to those having to do with the construction of same that it would be to the best interest of said railroad and the shipping public that certain railroad shops used in connection with said lines of railroad and a division point thereon be located at the City of Sapulpa, and that the City of Tulsa would be of minor importance as a railroad and shipping center, conditions have so changed as to make it imperative on the part of the operators of said lines of railroad to locate extensive shops and yards at the City of Tulsa, and at a point therein known as West Tulsa, and to move said division point from the City of Sapulpa to the said City of Tulsa; that at the time of the construction of said lines of railroad, the City of Tulsa was comparatively small, and it appeared to those constructing said lines of railroad that the City of Sapulpa would develop into a large city and an important shipping center, and that Tulsa would remain a comparatively small town and its shipping interests would be of minor importance, but notwithstanding said appearances, the City of Tulsa has developed into a city of approximately 125,000 inhabitants, and has become one of the largest, if not the largest, shipping centers in the State of Oklahoma; that

plaintiff now owns and operates and has for many years owned and operated a line of railroad extending in a northwesterly direction from said City of Tulsa through the cities of Pawnee, Perry and Enid, and that said line of railroad has for many years brought a great volume of freight and passenger business into the said City of Tulsa; that immense oil fields and oil properties have been developed and constructed and are being operated in the vicinity of and in all directions from the said City of Tulsa, and the said City of Tulsa has become the center of said operations; that other industries, transacting great volumes of business, have been located and are now being operated in the said City of Tulsa and in the vicinity thereof, and that said industries use the said City of Tulsa as their shipping center; that the City of Sapulpa has developed only to a very minor degree; that the population of said City at this time is approximately 20,000 people; that very few of the industries operated as hereinbefore set forth, use the City of Sapulpa or the terminals of said lines of railroad located thereat as a shipping [fol. 11] center.

(d) That at the time of the location of said shops and division point heretofore described at the said City of Sapulpa, it appeared to those having to do with the construction and operation of said lines of railroad at said times, that the topography of the ground in the vicinity of said yards and said shops would permit the location and construction thereat of sufficient facilities for the transaction of all shipping business necessary to be transacted at the shops and division point located in that vicinity, but plaintiff shows to the court that owing to the great increase in the volume of business which must be transacted at the shops and division point located in said vicinity, and owing to the fact that the shops and yards as now located at said City of Sapulpa are hemmed in by the business houses of the City of Sapulpa on the south of said yards and shops, and by a great hill immediately adjacent to said shops and said yards on the north thereof, and owing to the further fact that said shops and said yards are located on a decided curve in the right of way of plaintiff at said point, it has been and will continue to be impossible for this plaintiff to construct at said point suffi-

cient shops and yards to transact the business necessary to be transacted at the division point shops and yards which must be located in said vicinity or in the vicinity of the City of Tulsa.

(e) That at the time of the construction of said railroad lines as hereinbefore set forth, owing to the condition of the roadbed, the character of the motive power, engines and other equipment, it was necessary for the proper conduct of the business tranacted by said railroad company to locate division points and large shops at points not to exceed one hundred miles from each other, but in recent years the condition of the roadbed, bridges, etc., has been improved to such an extent, the motive power used by those operating said lines of railroad has been increased to [fol. 12] such an extent, the engines and other equipment used in the transaction of said business have been enlarged to such an extent that at this time it is necessary to the proper conduct of said business to increase the distances between the division points and large shops, and it has become and is necessary to remodel the plans of operation of said railroad lines, in that the division points and shops be located much farther apart, and that longer runs be made by crews in charge of said railway company's trains; that in carrying out this necessary scheme, it is necessary to locate the shops and division point to be located in the vicinity of Sapulpa and Tulsa, at the City of Tulsa.

(f) That this plaintiff is now and has been at all times mentioned in this complaint engaged extensively in interstate commerce; that all trains running through the yards and division point described herein are engaged in interstate commerce; that both the switch and road engines used by plaintiff in and through said yards and shops are constantly engaged in interstate commerce; that there is seldom a train movement made in the vicinity of said shops that has not for its purpose the furtherance of plaintiff's interstate commerce business; that a large proportion of the shipments hereinbefore mentioned originating at and passing through the City of Tulsa, are shipments destined to points outside the State of Oklahoma, or shipments passing through the State of Oklahoma, or shipments from points outside the State of Oklahoma, destined to points within

the State of Oklahoma; that plaintiff with its said lines of railroad is engaged in an extensive interstate railroad business, carrying a large volume of commerce, both freight and passenger, from Kansas City, Missouri, and points north and east, to Tulsa and other points within the State of Oklahoma, and to points south in the State of Texas, and from St. Louis, Missouri, and points north, east and south to Tulsa, and other points within the State of Oklahoma, and points in other states to the south; that the facilities and equipment constituting the shops and division point herein described, are necessary and imperative to the transaction of said interstate business, and are now [fol. 13] being and have for a long time been used extensively in the carrying on of said business.

(g) That those of plaintiff's officers and managers having to do with the management of its business, have, after mature consideration and deliberation, decided that it is to the best interest of the shipping public, passengers, and those having business with said railway company, and to the best interest of plaintiff that its railway shops and division point now located at the City of Sapulpa, be moved therefrom to the City of Tulsa and located therein at a point commonly known as West Tulsa and consolidated with the shops and yards now located at said point, and that such removal will greatly promote, accommodate and aid plaintiff's interstate commerce business; that as a result of its declaration of its intention to remove its said shops and division point, the actions on the part of defendants hereinafter complained of, were taken.

(h) That a removal of its shops and division point from Sapulpa to Tulsa, a distance of about eighteen miles and a consolidation of said shops with the shops now located at the City of Tulsa, as hereinbefore described, will enable plaintiff to promote and aid its interstate commerce business by eliminating annually hundreds of thousands of dollars of operating expense; that among many other items, plaintiff, if permitted to execute its said plan of removal, will be able to save in wages of employes approximately $200,000.00, per annum; in operating material and equipment, approximately $70,000.00 per annum; in fuel, power and lights, approximately $25,000.00 per annum; that owing

to the fact that it has been necessary for plaintiff to construct and maintain extensive shops and yards at Tulsa in addition to the shops and yards at Sapulpa, if plaintiff is prevented from removing its said shops from Sapulpa to Tulsa, it will be necessary for plaintiff to maintain and operate, at a great expense and loss to its stockholders, two extensive sets of shops and yards within eighteen miles of each other, thus entailing great additional and needless cost and expense, resulting in great confusion and conges- [fol. 14] tion of traffic causing loss of time to shipments, and thus interfering with and placing a direct burden upon plaintiff's interstate commerce business.

(i) That in the proper conduct and operation of its railroad, it becomes necessary from time to time for plaintiff to readjust its division points and to find better and more efficient, suitable and convenient places for repair work and for keeping its rolling stock and other instrumentalities of its railway used in interstate commerce in proper condition, and that these matters are purely managerial and necessary to be confided to such railway company the better to serve the public and its stockholders and those who invested large sums of money in said railway.

XIV

By reason of the foregoing facts plaintiff says that said Statutes in so far as they have been construed and made applicable to the conditions described herein, are unconstitutional, confiscatory, arbitrary, unnecessary and void in that they, as applied to said conditions and construed by said Commission, grant to said Commission authority to issue orders and decide questions directly regulating, affecting and constituting a burden on interstate commerce; that the question as to whether or not this plaintiff be permitted to remove its division point and shops from Sapulpa to Tulsa is one vitally and materially affecting the extensive interstate commerce business of plaintiff; that the orders of said Corporation Commission heretofore issued as hereinbefore set forth constitute a direct interference with, a regulation of, and burden upon plaintiff's interstate commerce business; that the orders that said Corporation

Commission will necessarily issue as a result of said proceedings and as a result of its construction of said Statutes, will constitute a regulation of and interference with, and a burden upon plaintiff's interstate commerce business.

XV

Plaintiff states that to require it, under the conditions as herein described, to continue its division point and shops at the City of Sapulpa, and to prevent it from removing its [fol. 15] said shops from the City of Sapulpa to the City of Tulsa and consolidating the two at said last named City, would cause a great and irreparable loss to plaintiff and its stockholders, and place a direct burden upon interstate commerce, and make it impossible for plaintiff to comply with the Act of Congress known as the Transportation Act, requiring it to economically operate its property; that it would cause such needless expenditure of large sums of money as to amount to a deprivation and taking of property from plaintiff without due process of law, forbidden by the Fourteenth Amendment to the Constitution of the United States.

XVI

Plaintiff says that unless it submits to the jurisdiction assumed by the Corporation Commission by reason of the above named Statutes as construed by said Commission, and obeys the injunctive process issued against it by said Commission as aforesaid, it will be burdened and harrassed with numerous suits for penalties for its failure to so submit to such jurisdiction, and will entail great and irreparable damage; that unless restrained defendants, J. F. Lawrence and C. C. Taylor, will appear before said Corporation Commission on the said 17th day of January, 1927, with sundry witnesses and will procure an order from said Commission preventing the removal of plaintiff's shops and division point as herein described until the above named Statutes are complied with by plaintiff, and unless restrained said Corporation Commission of the State of Oklahoma, composed of defendants, Frank C. Carter, Fred Capshaw and C. C. Childers, will on said day, or at some future date to which said action is continued, take jurisdic-

tion of said action and hearing and will, at the conclusion of said hearing, issue its order permanently prohibiting and enjoining plaintiff from so removing its said shops and division point until plaintiff has complied with the above named Statutes, and unless restrained and enjoined, defendant, Edwin Dabney, Attorney General of the State of Oklahoma, will, at said hearing and at future hearings [fol. 16] and times, attempt to enforce said Statutes and the orders of said Corporation Commission based thereon, thus harrassing and injuring plaintiff to its great damage; that unless restrained said defendants, and all of them, will enforce the temporary restraining order so issued by said Corporation Commission as herein set forth, and prevent plaintiff from putting into effect its schedule regulating its interstate trains as herein set forth and described; that the effect of said actions on the part of said defendants will interfere with the management and operation of plaintiff's interstate commerce business to such an extent as to cause plaintiff great immediate and irreparable damage. Plaintiff says that as the effect of the action of said defendants is to interfere immediately with the management of its interstate business and the control of its interstate trains, that the danger of said damage to plaintiff's business as herein described so caused by the actions of defendants as herein set forth, is imminent, and in order to preserve plaintiff's business and plaintiff's management thereof, a temporary restraining order by this Honorable Court is necessary. Plaintiff says that it has no adequate remedy at law.

Wherefore, and for as much as plaintiff is without remedy in the premises, according to the common law, and remediable only in equity, and to the end that plaintiff may not be subjected to suits for penalties and a multiplicity of suits which will otherwise result, and will not suffer irreparable injury and damage which must result if plaintiff refuses to submit to the jurisdiction of said Corporation Commission, and to the end that plaintiff may be permitted to pursue and carry on its business without unlawful hindrance or obstruction, plaintiff prays that a writ of subpœna be issued against the defendants, and that each and every one of them named and described be ordered to appear and

fully submit and make answer to this bill of complaint, but not under oath, answer under oath being expressly waived, and that said defendants, and each of them, their agents, [fol. 17] servants and employes, and all other persons acting under or through their authority, or authority of their officers and all other persons similarly situated, respectively, be enjoined by final decree, and in the meanwhile by preliminary injunction, from compelling plaintiff to submit to the jurisdiction of the Corporation Commission in the several matters aforesaid, and plaintiff prays that in the meantime a temporary restraining order be issued in accordance with its plea for preliminary injunction, and in order that said plaintiff may not suffer the irreparable injury and damage that it otherwise will and must suffer as is alleged and charged in said bill of complaint.

Stuart, Cruce & Franklin, Attorneys for Plaintiff.

[fol. 18] *Duly sworn to by Ben Franklin. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES E. HUTCHISON—Filed January 19, 1927

STATE OF MISSOURI,
County of Greene, ss:

James E. Hutchison, being duly sworn upon his oath deposes and says:

My name is James E. Hutchison. I reside in the City of St. Louis, State of Missouri. I am employed by the St. Louis-San Francisco Railway Company as Vice-President in Charge of Maintenance and Operation. I have been continuously in the employ of the St. Louis-San Francisco Railway Company and its predecessors since about March 1, 1903. My first employment with the St. Louis-San Francisco Railway Company was as trainmaster, a position which now bears title of assistant superintendent, with headquarters at Sapulpa, Oklahoma, and had charge as

trainmaster or assistant superintendent over that part of the line extending from Sapulpa, Oklahoma, to Sherman, Texas.

At that time the railroad had been quite recently extended from Sapulpa to Oklahoma City and from Sapulpa to Sherman, Texas. The predecessor of the St. Louis-San Fran- [fol. 20] cisco Railway Company had pushed their line southward and westward from St. Louis and had reached Sapulpa, Oklahoma, then Indian Territory, a few years prior to 1903. At the time of this construction there was little development in the country so far as white population or white settlements were concerned. The territory was known as the Indian Territory and was in fact a large Indian reservation. So late as the 1st of March 1903 there was only a small village at Tulsa and the same at Sapulpa.

When the railroad halted at Sapulpa in its building operations it was, of course, necessary to provide something in the way of terminal facilities at that point and when the two lines, the one extending from Sapulpa, Indian Territory, to Oklahoma City, Oklahoma Territory, and the other extending from Sapulpa, Indian Territory, to Sherman, Texas, were constructed and placed in operation it was necessary to enlarge this terminal somewhat, but in 1903 when affiant entered the employ of the predecessor of the St. Louis-San Francisco Railway Company as trainmaster at Sapulpa, Indian Territory, there was very little in the way of a terminal at Sapulpa. There was a small roundhouse with a few necessary accompanying buildings and small collection of yard tracks, in fact barely sufficient to take care of the small amount of business handled at that time.

Along about 1905 Tulsa began to enter into the picture. Tulsa began to show considerable signs of growth and with the advent of the oil shortly afterwards Tulsa became the center from which oil operations were conducted account growth so very rapid. Tulsa from its start to grow, along about 1905, grew industrially and it became necessary almost at once for the predecessor of the St. Louis-San Francisco Railway Company to provide something in the way of terminal facilities at Tulsa. However, this was taken care of all that it could possibly be from [fol. 21] Sapulpa and there was not a widening out of ter-

minal facilities at Tulsa until it was absolutely necessary to do so, but the growth of Tulsa was so great and its industrial growth so great that the St. Louis-San Francisco Railway Company, or its predecessors, found it necessary from time to time to build and construct additional units of terminal at Tulsa and West Tulsa to take care of this rapidly developing industrial business.

The location at West Tulsa where the freight terminal was established is just about twelve miles from the terminal at Sapulpa and ever since it became necessary to develop the terminal at West Tulsa it has thrown a heavy volume of expense on the St. Louis-San Francisco Railway and its predecessors that could not in any way have been foreseen when the construction of the line occurred or for some years thereafter. Sapulpa has never grown industrially in anything like degree that Tulsa has. The industrial life of Sapulpa could easily be taken care of without terminal facilities of any consequence at that point, but Tulsa must be served and the terminals at West Tulsa and at Tulsa have been enlarged and extended almost every year for a number of years and so far as we can judge at this time there is reason to expect that this expansion must go on for many years yet to come.

There has been a great change in operating conditions since, we might say, the year 1900. The size of locomotives has been greatly increased and there have been very many useful inventions that have made these locomotives much more serviceable and much more efficient. In 1900 it was thought and it was the general practice of all railroads to run their freight engines generally not much more than 100 miles. In some few cases they may have reached a run of 150 miles without giving the engine attention in roundhouse, and passenger engines were run but [fol. 22] little or no further. Since then, however, the advent of the superheater, improvements in fire boxes, brick arches, hot water injectors and many other things have made it possible to run these engines very much farther.

Some changes in construction of line have been necessary in order to let railroads secure greatest possible benefit from this changed condition of operation and so far as Frisco Railroad is concerned we are running our passenger engines now in some instances more than six hundred

miles and quite a number from St. Louis to Oklahoma City, a distance of five hundred forty-two miles without changing, and we are now strengthening some bridges between Kansas City and Birmingham and will in a few weeks be running both passenger and freight engines through without change between Kansas City and Birmingham, a distance of seven hundred thirty five miles.

These changes that have been brought about and that have meant a wonderful economy in operation of the railroads have made numerous terminals on many railroads useless and many have been and more will be abandoned. In such cases they are not removed—they are just simply not longer needed and are abandoned, and that is largely situation at Sapulpa. The terminal at Sapulpa is not longer needed. Tulsa has come into the matter so strongly and Tulsa cannot be dispensed with under any circumstances and it seems that in the interest of efficiency and economical operation there is nothing left for the St. Louis-San Francisco Railway Company to do except to abandon its terminal at Sapulpa or practically abandon it. There is one very large item in connection with the changed condition that seems to make it necessary to abandon Sapulpa terminal and that is the wonderful growth of Tulsa and the fact that this growth is so largely industrial and must be served.

Have had many figures made as to what could be saved by abandoning the terminal at Sapulpa and doing the [fol. 23] work at Tulsa that is now done at Sapulpa. Taking into account the items that can be almost surely and definitely determined we figure that we would show a saving of a little more than $30,000.00 per month. There are a good many items that are indeterminate and that only actual experiment would show what if any saving would result from them and it is not safe to count saving that would result from such causes but practically from wiping out duplicate service alone there would be a saving of slightly over $30,000.00 per month. If Sapulpa were abandoned and the work that is now done at Sapulpa were done at Tulsa the remaining terminals would be as follows:

Afton to the east is what we call an intermediate terminal. This point is located about 77 miles east of West Tulsa and at this point we can make a good many repairs to cars and

we do small, light repair work on locomotives. The next terminal to the east is Monett, Missouri, where we have a considerable development of mechanical shops and buildings and can and do do a large amount of car repair work and also very considerable amount of engine running repair work. This point is about 144 miles from West Tulsa. To the south at Okmulgee we have another industrial situation, and also the line from Fayetteville to Okmulgee comes into the main line at that point, so that we have a small intermediate terminal at Okmulgee where we do light repairs to cars and some very light work on engines. This point is about 43 miles from West Tulsa. At Francis, Oklahoma, which is 114 miles from West Tulsa we have a very small intermediate terminal, can do light work on cars and light running repairs to engines. At Sherman, Texas, 219 miles from West Tulsa we have quite a considerable shop and can do almost any kind of work on cars and engines. To the west at Oklahoma City, 116 miles from West Tulsa, we have a very considerable shop and can and do do heavy repairs to cars and *and* engines. We have [fol. 24] done no heavy repairs to locomotives at Sapulpa for several years. Our heavy repair work in that territory has been taken care of at WestTulsa for a long time. The mechanical facilities at Sapulpa have been devoted to rapid turning of road power and yard power and doing necessary running repairs, but the heavy work has been done at Tulsa and we have at this time a very good shop layout at Tulsa and can do and do do all kinds of work on engines and cars in considerable volume.

The yards at Sapulpa, and by that I mean the tracks which take care of the business moving through that point, are inadequate and have been for a long time. It is one of the most expensive yards on the entire St. Louis-San Francisco Railway Company to switch, a great deal of the switching, in fact I think fully two-thirds of the switching, done in this yard is done up hill, and it is and always has been a very bad situation. There is not room to widen out at all at the present location and if we secured adequate facilities at Sapulpa it would be necessary to practically tear down and destroy all we have there now and go to some other location and at an expense which has been estimated at about two and one-half million dollars to secure

the terminal that we would need if we continued to use it as we have in the past.

The injunction of the Transportation Act is that we must operate our railroads efficiently and economically if we are permitted to enjoy some certain benefits that may be enjoyed only under these conditions and we cannot operate a terminal at Sapulpa efficiently and economically. We have not done so for some years and we feel that we must get away from it.

We are not serving some parts of our line efficiently and economically and I will use only two illustrations, although many could be used. Business originating on the line from [fol. 25] Tulsa to Enid, moving to points south or west of Sapulpa, gets a usual terminal delay at West Tulsa; is then moved twelve miles to Sapulpa and gets another terminal delay. Business moving from points west or south of Sapulpa to points west of Tulsa on the Enid line, or beyond and through Enid, suffers in the same way, and practically all business moving through in both directions has a substantial delay on account of these terminals that would be removed were the business consolidated at West Tulsa as we are expecting to do.

The business that is now being handled at Sapulpa could be shifted to Tulsa without spending a dollar on additional facilities at Tulsa but as I have said before Tulsa is growing rapidly and there has scarcely been a year for several years that we have not enlarged the terminal at Tulsa and the terminal was built and has been improved with the purpose of handling the industrial proposition wholly in mind, and to make it more efficient for the handling of the train business through. We would probably spend $75,000.00 or $80,000.00 in lengthening some of the yard tracks and securing little more yard room and we would probably spend $25,000.00 or $30,000.00 in enlarging slightly the present roundhouse at West Tulsa and building possibly some extension to the power plant and we could do those things at our leisure. It would not be necessary to do them before the consolidation was effected.

It is my opinion that conditions that have grown up around which is centered and outstanding the wonderful growth of Tulsa causes us to face a condition which we

cannot endure and which we should have changed many years ago and I do not see how it can be longer delayed.

Further deponent sayeth not.

James E. Hutchison.

[fol. 26] Subscribed and sworn to before me this 18th day of January, 1927. John W. Miller, Notary Public. My commission Expires August 24, 1927. (Seal.)

[File endorsement omitted.]

[fol. 27] In United States District Court

[Title omitted]

Affidavit of C. T. Mason—Filed January 19, 1927

C. T. Mason of lawful age being first duly sworn deposes and says:

That he is now and has been connected with the St. Louis-San Francisco Railway Company, as Chief Dispatcher, Trainmaster, Assistant Superintendent and Superintendent since February, 1907, that he has been Superintendent, located at Sapulpa, Oklahoma of the Southwestern Division of said railway with his headquarters at Sapulpa, Oklahoma, since the 1st day of January, 1926, and is acquainted with the conditions and operation of said Railway Company, particularly with regard to the operation of the division point now located at Sapulpa, Oklahoma, and the yards and shops of said railway located at Tulsa, Oklahoma.

During the past ten or fifteen years, great improvements have been made in the construction and operation of engines and as a result of this improvement, it has been found possible and expedient to lengthen terminal points used for [fol. 28] the operation of freight and passenger trains. This applies not only to the Frisco railroad in the State of Oklahoma, but in all other states through which it operates, as it also applied to other railroads.

At the time of the location of the terminal at Sapulpa, Tulsa was comparatively an unimportant station. At the

present time, the business at Tulsa has increased very much more rapidly than it has at Sapulpa, with the result that at the present time, it is estimated that from twelve to fifteen times the volume of business originates at Tulsa as originates at Sapulpa. This has made it absolutely necessary to take care of a large number of yard engines at Tulsa, and in addition to this, Tulsa is a terminal point for trains operating on the western division between Tulsa and Enid and Avard; so that under the present arrangements, we are forced to operate two division terminals, namely: Sapulpa and Tulsa within a short distance of fourteen miles. The physical condition- for establishing a terminal point are much more favorable at Tulsa than Sapulpa, this is due, in a large measure, to the fact that the yards at Sapulpa cannot be enlarged or extended because on one side we cannot extend the yard on account of the topography of the hill and on the other side we are hem-ed in by the streets and business houses. Another condition at Sapulpa, which does not exist at West Tulsa, is that approaching the yard from either the south or the west, we encounter a heavy grade. Trains coming into Sapulpa from the south have to enter the yard on a sharp curve and heavy grade, and in a very large per cent of trains operating from the south, the train is unable to make the grade and after the train stalls, it is necessary to back out of the yard and wait for yard engine to come to its assistance. This not only delays and interfer-s with the operation of trains, but causes a great deal of inconvenience to the streets, delays to automobiles and other traffic.

[fol. 29] Necessarily, by the operation of two terminals within this short distance, there is more or less delay to loaded cars, both interstate and intrastate. We estimate that a conservative average delay to each car in the terminal would approximate twelve hours, and there does not exist the necessity of both the Sapulpa and this Tulsa terminal, and as before stated, the volume of business originating at West Tulsa, makes the terminal at that point an absolute necessity.

The cost of operating these two terminals, so close together, could be very greatly reduced by consolidating them at West Tulsa. The great reduction would be made in the overhead cost in the item of supervision. As an exam-

ple, at the present time, we find it necessary at Sapulpa to have from twelve to fourteen yard engines. By consolidating the terminals, this expense could be reduced more than half. The item of overhead expenses in the operation of trains alone would amount to a terminal tra-nmaster, two yard masters and four assistant yard masters at Sapulpa, which could be eliminated in the change with the probable addition of two assistant yard masters at West Tulsa. The same condition prevails with reference to the operation of the repair shops.

The unfavorable conditions mentioned with reference to Sapulpa does not exist at West Tulsa. Another serious handicap in the operation of our trains out of Sapulpa is due to the fact that we have an insufficient supply of water necessary for the operation of our locomotives, and also this water is not as suitable for this use and there being a good many months in the year, during the summmer time, or when we have drouth, that this water is almost totally unfit for use, resulting in having to be treated very heavily, also in excessive blowing out of the boilers, which is not only an expense by reason of the fact that it requires an excessive amount of fuel to heat this water, but further, due to the fact that the water itself is very injurious to the boiler. The water supply at West Tulsa, which is brought from Sand Springs, is very much better than the available [fol. 30] supply at Sapulpa. It is also true that during a portion of the year, the water at Sapulpa is bad for drinking purposes. We have frequently been requested, by trainmen in our service, to ship in water from West Tulsa for drinking purposes.

At the present time, Sapulpa is not a terminal for all of our passenger and freight crews. On some of the passenger trains on the division as operated at the present time, the train crews operate between Oklahoma City and Tulsa. On others, between Oklahoma City and Kansas City and still others between Oklahoma City and Monett. We also have a passenger service train and engine crews operating, at the present time, on trains Nos. 525 and 526 between Tulsa and Holdenville, the crews running through Sapulpa. The most of our train men in passenger service at the present time operating over this territory, are divided as

between Oklahoma City, Sapulpa, Kansas City, Monett and Sherman.

With new time table taking effect January 23rd it is proposed to extend trains 507, 510, 511 and 512 to terminate at Tulsa instead of Sapulpa. This will facilitate the handling of passengers, mail and express, avoiding neces-ity of main line trains being delayed doing this work at both Sapulpa and Tulsa, eliminating delay at Sapulpa and transfer of passengers to or from Tulsa at Sapulpa. This change will not require additional facilities at Tulsa or eliminate any facilities now at Sapulpa.

Further affiant saith not.

C. T. Mason.

Subscribed and sworn to before me on this the 18th day of January, 1927. June E. Hedgcock, Notary Public. My commission expires January 27, 1929. (Seal of June E. Hedgcock, Notary Public, Oklahoma Co., Okla.)

[File endorsement omitted.]

[fol. 31] In United States District Court

[Title omitted]

Affidavit of H. W. Press—Filed January 19, 1927

H. W. Press, of lawful age, being first duly sworn, deposes and says:

That he is Assistant Comptroller for the St. Louis-San Francisco Railway Company, and has occupied that, and similar positions with said company for appproximately twenty-five years; that the duties of his said position with said company are in the nature of accounting and statistical work, principally the latter; that he is required to analyze the records as currently maintained by the railroad, not only by the accounting department, but also by the operating, mechanical, and other departments of the system, for the purpose of developing the earnings, expenses, and other items of income and income deductions required by the

management, and for proceedings in the courts, before the Interstate Commerce Commission and the different state [fol 32] railroad commissions. He is also required to prepare special statistics showing the detailed cost of operation, such as the cost of station service, the cost of train service, the cost of yard service, etc. For many of these special statistics he is required to make a study on the ground, at stations, on trains, and on switch engines in terminals, and by reason of that fact, he is not only familiar with accounting matters but is also familiar with all phases of operation.

Affiant further says that he has compiled from the records of said railway company a statement showing the volume of business and earnings from freight and passenger traffic at Sapulpa, Oklahoma, for the year from December, 1925, to November, 1926, inclusive; that said statement shows the tonnage of, and revenue from freight traffic originating at, and received at Sapulpa, Oklahoma, and the revenue from passenger traffic from that station; that said statement is true and correct, and is hereto attached, marked "Exhibit A," and made a part of this affidavit.

Affiant has also prepared a similar statement, showing the freight traffic to, and from, and passenger traffic from the stations at Tulsa, Oklahoma, and states that the same is true and correct, and is attached to this affidavit, marked "Exhibit B," and made a part hereof.

Affiant has also prepared a statement showing the percent of intrastate and interstate traffic originating and received at, and passing through the stations at Tulsa, Oklahoma, for the year ending December 31, 1926, as applying to freight traffic originating at, and received at Tulsa stations, for the month of October, 1926, as applying to [fol. 33] freight traffic passing through Tulsa, and for the year from December, 1925, to November, 1926, inclusive, as applying to passenger traffic originating at Tulsa, and states that same is true and correct, and is hereto attached, marked "Exhibit C," and made a part of this affidavit.

Affiant has also prepared a statement taken from the United States census for the years 1907, 1910, and 1920, showing the population as shown by said census, for said years, for the city of Tulsa, and the population as shown by said census, for the City of Sapulpa, and the population

as shown by said census, for said years, for the State of Oklahoma, and states that the same is true and correct, as shown by said United States census, and is attached hereto, marked "Exhibit D," and made a part of this affidavit.

Further affiant saith not.

H. W. Press.

Subscribed and sworn to before me this 18th day of January, 1927. June E. Hedgcock, Notary Public. (Seal of June S. Hedgcock, Notary Public, Oklahoma Co., Okla.)

My commission expires January 27, 1929.

[File endorsement omitted.]

[fol. 34] Exhibit A to Affidavit of H. W. Press

St. Louis-San Francisco Railway Company

Statement showing Volume of Business and Earnings from Freight and Passenger Traffic at Sapulpa, Okla., for the Year from December, 1925, to November, 1926, Inclusive.

Freight Traffic

	Tons of revenue freight	Total freight revenue
Freight forwarded—Local	74,093	$141,321
Freight forwarded—Interline	86,583	631,440
Freight received—Local	79,890	129,095
Freight received—Interline	28,852	257,185
Total Freight Traffic	269,418	$1,159,041

Passenger Traffic

Local Ticket Sales	$93,592
Interline Ticket Sales	72,094
Total Ticket Sales	$165,686
Total Freight and Passenger Revenue	$1,324,727

[fol. 35] EXHIBIT B TO AFFIDAVIT OF H. W. PRESS

St. Louis-San Francisco Railway Company

Statement showing Volume of Business and Earnings from Freight and Passenger Traffic at Tulsa, Okla., for the Year Ended December 31, 1926.

Freight Traffic

	Tons of revenue freight	Total freight revenue
Freight forwarded—Local	458,912	$1,363,599
Freight forwarded—Interline	783,523	6,544,454
Freight received—Local	289,274	1,146,794
Freight received—Interline	232,892	2,588,238
Total Freight	1,764,601	$11,643,085

Passenger Traffic

Local Ticket Sales	$786,296
Interline Ticket Sales	966,603
Total Ticket Sales	$1,752,899
Total Freight and Passenger Revenue	$13,395,984

NOTE.—Above Revenue from Passenger Traffic covers year from December 1925 to November 1926, both, inclusive.

St. Louis-San Francisco Railway Company

Statement Showing per Cents of Intrastate and Interstate Traffic Originating and Received at and Passing Through Tulsa, Okla.

Freight Traffic Originating and Received at Tulsa, Okla., During Year 1926

	Intrastate		Interstate		Total Freight Revenue
	Revenue	Per cent of total	Revenue	Per cent of total	
Freight forwarded—Local	$661,755	48.53%	$701,844	51.47%	$1,363,599
" " —Interline	496,070	7.58%	6,048,384	92.42%	6,544,454
Total Forwarded	$1,157,825	14.64%	$6,750,228	85.36%	$7,908,053
Freight received—Local	$476,493	41.55%	$670,301	58.45%	$1,146,794
" " —Interline	93,177	3.60%	2,495,061	96.40%	2,588,238
Total Received	$569,670	15.25%	$3,165,362	84.75%	$3,735,032
Total Forwarded and Received	$1,727,495	14.84%	$9,515,590	85.16%	$11,643,085

	Intrastate		Interstate		Total number of cars
	Number of cars	Per cent of total	Number of cars	Per cent of total	
Freight Traffic Passing through Tulsa —October, 1926	1,466	12.60%	10,167	87.40%	11,633

Passenger Traffic Originating at Tulsa December, 1925, to November, 1926, Both, Inclusive

	Intrastate		Interstate		Total
	Revenue	Per cent of total	Revenue	Per cent of total	Passenger Revenue
Local Ticket Sales	$440,376	56.01%	$345,920	43.99%	$786,296
Interline Ticket Sales	289,981	30.00%	676,622	70.00%	966,603
Total Ticket Sales	$730,357	41.67%	$1,022,542	58.33%	$1,752,899

[fol. 37]

EXHIBIT D TO AFFIDAVIT OF H. W. PRESS

St. Louis-San Francisco Railway Company

Statement Showing Population of the Cities of Tulsa and Sapulpa, Okla., and the State of Oklahoma as of 1900, 1910, and 1920.

	1905	1907	1910	1920
Tulsa, Okla.	*	15,000	18,182	72,075
Sapulpa, Okla.	*	8,000	8,283	11,634
State of Oklahoma	*	1,414,177	1,657,155	2,028,283

*Oklahoma not admitted to Statehood until 1907 and figures not available for year 1900.

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF H. L. WORMAN—Filed January 19, 1927

H. L. Worman of lawful age, being first duly sworn, deposes and says:

That he is Superintendent of Motive Power for the St. Louis-San Francisco Railway Company and has occupied that position for the last seven years, and that he has been in the mechanical department of said Railway Company for more than twenty-one years; that he is thoroughly acquainted with the conditions relative to the yards, shops, equipment and motive power of the St. Louis-San Francisco Railway Company at Sapulpa, Oklahoma, and also the shops, yards, cars, engines and all terminal facilities now being used at Tulsa, Oklahoma. Affiant further states that he is familiar with the purposes and uses of said equipment by said Company.

[fol. 39] If the shops and roundhouse at Sapulpa are abandoned and maintenance of equipment now being taken care of at Sapulpa moved to Tulsa, we can make a saving of $11,000.00 per month, or a reduction of eighty-six men in the locomotive and car department; a further saving per month of $1,614.00 in power plant expense; a saving of $500.00 per month in the purchase of water for shop use; a saving in electricity purchase for lighting and power purposes, making a total saving of approximately $14,000.00 per month. By moving this work to Tulsa, additional facilities needed to properly maintain the equipment would amount to approximately $35,000.00. This would be for moving the mill shop, boiler capacity and power plant, and cinder conveyor. The consolidation of the mechanical work at Tulsa now being taken care of at Sapulpa, would, in addition to the savings above mentioned, affect many other features that cannot well be reduced to a dollar and cent standpoint, some of which are: A reduction in the number of hostlers by reason of a more up to date facility at Tulsa; the elimination of store house expense, power plant expense, and by reason of having more room at Tulsa for the performance of the work and more room to expand, the move

of power and handling of bad order cars both empty and under load would be greatly expedited. A great deal of duplicate inspection would be done away with. The Interstate Commerce Commission laws require that cars must be thoroughly inspected and air tested when departing from a terminal. This work is now being done at Sapulpa, and where a part of a train moves from Sapulpa to Tulsa and there picks up the major portion of tonnage, this same train that was inspected at Sapulpa must be again inspected at Tulsa, which further delays the movement.

Our labor turnover at Tulsa is considerably less than at Sapulpa by reason of the better living conditions at Tulsa. We have exceptionally good boiler water at Tulsa, and we have exceedingly bad boiler water at Sapulpa, which costs us a great deal of money on account of the necessity to treat [fol. 40] the water at Sapulpa with soda-ash in order to make it fit for boiler use.

Having two terminals located fourteen miles apart, naturally costs us more for supervision than it would if one of these points were eliminated, as each point must have a roundhouse foreman at night and an assistant, whereas if the two places were combined, the entire work could be taken care of by the two men, and the same thing is true of the supervision in all other departments.

Abandoning Sapulpa as a mechanical repair plant would release a great deal of machinery that would not be needed if the work were taken care of at Tulsa, as we have already enough machinery at this point to take care of the combined proposition, and the machinery and other facilities released at Sapulpa could be used at other points on the railroad where it is needed.

The consolidation would materially reduce the amount of material carried in store stock as we would only have one stock to carry. As the matter is now, we must carry two, and so much of this material is carried in store stock for protection purposes.

Abandoning Sapulpa as a maintenance of equipment and repair point in no way jeopardizes our ability to properly maintain all the equipment operating in and out of the State of Oklahoma, as for the past seven or eight years we have very materially increased our mechanical facilities in the State of Oklahoma for taking care of both locomotive and

car work. We have located at Enid, Tulsa, Hugo, Afton and Muskogee first class mechanical repair points where power can be maintained and all the necessary work done on equipment of every description. By eliminating Sapulpa simply means that the force will be increased at Tulsa and other points where adequate facilities are maintained at the present time to take care of repairs.

[fol. 41] The question of eliminating certain terminals today on railroads, is not necessarily a reflection on the management in charge of the railroads at the time such terminals were installed. A good many years after a mechanical repair point was established at Sapulpa, there sprung up a little village at Tulsa, and almost from the very beginning of that little village, the Frisco Railroad had, considering the size of the town, a remarkable tonnage to handle, and as the town of Tulsa grew, the Frisco Railroad's business became heavier, until it was found necessary, in order to take care of the line coming in from Enid to Tulsa, and the tremendous traffic originating at Tulsa, to have a repair point at that place, first, by reason of the fact that a great deal of the equipment and practically all the locomotives working in this territory would have occasioned a great deal of unnecessary expense for the required mechanical attention at Sapulpa; second, sufficient facilities were not maintained at Sapulpa to properly take care of the equipment, without burdening it further by taking equipment from Tulsa to Sapulpa to have the work done; and, third, by reason of the fact that it was impossible to buy additional property adjacent to the present mechanical facility at Sapulpa, suitable for enlarging the plant. During all these years there has been a gradually increased necessity for a larger mechanical facility at Tulsa, by reason of the heavy traffic originating at this particular point, and on account of not being able to expand at Sapulpa, as above stated, the expansion at Tulsa necessarily followed where there is plenty of room, good living conditions, good water, etc. I simply mention these things in order to show that Tulsa's mechanical facility was not originated for the purpose of sooner or later abandoning Sapulpa as a repair terminal, but was established because there was a dire necessity for a shop at this point to take care of the work originating there.

It must be further remembered that the railroad, in striving to produce better transportation and to handle it more economically, acquire larger and more modern locomotives, [fol. 42] larger and more modern freight equipment, as well as passenger *r*equipment, and it was gradually found that a necessity no longer existed for a repair point every 100 miles or 125 miles. For this reason repair points have gradually been eliminated in territories where they were too close together, and were not needed. I might mention as specific instances, Cape Girardeau, Missouri and Cherokee, Kansas. The elimination of these small terminals is made possible by reason of the fact that where heretofore locomotives on passenger trains were run for a distance of from 100 miles to 125 miles on the longest runs, passenger engines are now running a distance of 575 miles, or from St. Louis to Oklahoma City, a distance of 542 miles, and are doing it more successfully than they did when run the short distances of approximately 125 miles. In eliminating these small repair points that I speak of, it has been the policy of the road, and will continue to be the policy, to strengthen the larger points with the machinery and equipment removed from points abandoned. This eliminates the weak places where they are not needed, and strengthens the more important points where additional facilities are needed without spending money for new machinery and other facilities to reinforce the repair points where such machinery and facilities are needed. There are some facilities and machinery that are not needed at Sapulpa, which will be moved to Tulsa, where there is today a modern, well-equipped machine shop with the latest improved machinery that money can buy; well heated, well lighted, operated with electricity, and many of the machines have individual electric drives. There is a modern power plant with water tube boilers, electric driven air compressors, etc. Also a modern roundhouse, with stalls of sufficient length to house the heaviest power.

Another matter of vital importance in handling a large repair point, is plenty of outside room for standing equipment waiting to come in or go out of a shop, as well as ample room for expansion. In other words, one cannot afford to install modern facilities in a location where in another few

years it will be found that the business has increased to [fol. 43] such a point as to make it necessary that the entire mechanical facilities be moved to some other location. Considering the great volume of tonnage originating at Tulsa, it is imperative that a modern shop be maintained at this point to properly care for the equipment necessary to handle this traffic, and if we are compelled to operate two terminals within fourteen miles of each other, it makes it a very expensive proposition and naturally this additional cost must be borne by the shipping public.

H. L. Dorman.

Subscribed and sworn to before me this the 18th day of January, 1927. June E. Hedgcock, Notary Public. My commission expires January 27th, 1929. (Seal of June E. Hedgcock, Notary Public, Oklahoma Co., Okla.)

[File endorsement omitted.]

[fol. 44] In United States District Court

[Title omitted]

Affidavit of F. H. Shaffer—Filed January 19, 1927

F. H. Shaffer of lawful age, being first duly sworn, deposes and says:

That he has been connected with the St. Louis-San Francisco Railway Company for the last eight years; that during that time he has been connected with the Transportation Department; that he has been Superintendent, Assistant General Manager and is now General Manager of said Company; that as General Manager of said Company he is acquainted with the operation of said Company's trains, its terminals, yards and shops; that he is particularly acquainted with the business of said Company with relation to its shops and division point at Sapulpa, Oklahoma, and its shops, terminal and yards at Tulsa, Oklahoma; that affiant's knowledge regarding the matters hereinafter set

forth in this affidavit has been acquired by reason of his connection with said Company as above set forth.

[fol. 45] As a rule twenty to twenty-five years ago terminals were located about one hundred miles apart. Since that time, with the improvement in locomotives and roadway expediting the movement of freight trains, it is desirable to lengthen the runs, eliminating terminals, thereby reducing expense and delay to traffic.

On the Southwestern division West Tulsa terminal is located only twelve miles from Sapulpa terminal. The earnings from freight and passenger traffic at Tulsa for the year ending December 31, 1926, amounted to something over $13,000,000.00, while the business from Sapulpa for the year 1926 was slightly in excess of $1,000,000.00. Our business at Tulsa continues to increase, and it is vitally important that we have the terminal of our trains at that location for the purpose of expediting business and reducing unnecessary expenses. If we are permitted to move our terminal from Sapulpa to Tulsa, it will result in a saving in transportation expenses of slightly in excess of $30,000.00 per month. This saving is in yard engines or service, road freight service, passenger and freight station force, the loading of merchandise cars, per diem on cars, etc. We are working at Sapulpa an average of thirteen engine shifts per day, based on the year 1925. By changing the terminal to Tulsa, we will only work at Sapulpa enough yard engines to take care of the industry switching, and we think we can take care of that switching with two shifts. At West Tulsa it will be necessary to increase the number of yard engines to approximately five shifts per day. This results in a saving of seven yard engines, working eight hours per day. At both Sapulpa and Tulsa, at present, we have the necessary supervision, including Superintendent of Terminals, Terminal Trainmaster, General Yardmaster, Assistant Yardmaster, etc. The entire yard supervision at Sapulpa will be eliminated, and it will be necessary to add only two or three positions in Tulsa on account of the increased car handling. In the Sapulpa terminal, at the present time, we employ one Chief Yard Clerk and [fol. 46] fourteen other yard clerks. None of these men will be required at Sapulpa if the terminal be moved, but

it will probably be necessary to transfer six or seven of these positions to Tulsa. It is necessary, at present, for almost all through freight trains operating between Sapulpa and Afton, to stop at Tulsa to set out and pick up cars, which results in considerable delay, overtime and fuel, in doing so. By changing the terminal to Tulsa, our trains would start out of Tulsa with the trains made up properly and avoid such delays.

Our present facilities at Sapulpa are inadequate to properly take care of the long trains we are now handling. In trains consisting of fifty cars or more, — are required to double over, using two tracks, resulting in considerable delay, both inbound and outbound. The average time lost on account of doubling over and other terminal delays at Sapulpa, is 164 hours per month. I am positive this delay will be cut in half were the trains made up at Tulsa. Cost of fuel and other engine supplies is estimated at $5.16 per hour.

At Tulsa a very large number of cars are loaded with merchandise in the freight house every day. In addition a large number of cars are loaded in the Tulsa terminal on team tracks and otherwise, which cars are ready for movement during the evening hours. At the present time, in order to move this business westbound, it is necessary that a crew at Sapulpa be ordered to run light to Tulsa to pick up this westbound business, returning to Sapulpa, where it is again switched and forwarded by crews operating toward Oklahoma City and Sherman. This is an unnecessary expense, and if the terminal were located at Tulsa, the crews could be ordered as the business demanded, and the traffic could be handled through to Oklahoma City, Francis, and intermediate points without the necessity of stopping at Sapulpa. The turnaround service operated during the month of December, 1926, amounted to twenty trains, at a cost of $720.00.

If permitted to move the terminal from Sapulpa to Tulsa, it would result in a saving in the transfer of less than carload shipments now being worked over the platform at [fol. 47] Sapulpa. At the present time freight loaded at stations such as St. Louis and Kansas City, destined to local points south and west of Sapulpa, is moved to Sapulpa where it is reworked into other cars and forwarded to des-

tination by local freight trains. Adequate facilities are maintained at Tulsa to take care of this less than carload freight that is now being worked at Sapulpa, and it can be worked at Tulsa with very little additional expense. This saving would be far reaching. Where at the present time, for example, St. Louis freight house will load one car of freight for Tulsa and one for Sapulpa, the loading could be taken care of in one car which would save hauling the added loaded car from St. Louis to Sapulpa. It would also save expense in the switching of the cars at the freight houses at originating points.

By eliminating Sapulpa the per diem saving would be very considerable—the estimate being placed at $10,000.00 per month. This is brought about by reason of cars that are now handled into Sapulpa and reswitched, being handled through Sapulpa without stopping. It would further save an average delay to freight of from six to eight hours per day. By eliminating the terminal at Sapulpa, will also result in a considerable saving in track maintenance. There is quite a large force now engaged in maintaining the tracks at both Tulsa and Sapulpa, and if the proposed elimination is effected the maintenance of such tracks will be decreased about $300.00 per month.

The following terminals at present are tributary to Sapulpa:

Oklahoma City, approximately 104 miles,
Francis, approximately 102 miles,
Afton, approximately 89 miles,
Monett, approximately 156 miles,
Enid, approximately 132 miles.

By eliminating the Sapulpa terminal, the following would be the distances from Tulsa:

Oklahoma City, approximately 116 miles,
Francis, approximately 114 miles,
Afton, approximately 77 miles,
Monett, approximately 143 miles,
Enid, approximately 120 miles.

It will be noted that by the elimination of the Sapulpa [fol. 48] terminal there are no excessive lengthy freight divisions.

By eliminating the repair to locomotive and car shops at Sapulpa, there will still be adequate facilities to take care of this work maintained at West Tulsa, Enid, Oklahoma City, Hugo, Muskogee and Afton. Possibly by eliminating the terminal at Sapulpa it will be necessary to add a small force at West Tulsa.

The present yards at Sapulpa are inadequate to take care of the modern freight trains now being operated in that territory. The tracks are entirely too short. It is necessary that the trains double over, using two tracks, and the yards are so located that they cannot be enlarged without a very excessive expenditure. Without question, the elimination of Sapulpa will bring about an improved handling of freight out of and into Tulsa proper. For example, a shipment now originating west or south of Sapulpa, destined Tulsa, is set out at Sapulpa by reason of the terminal. The train is then inspected, switched and moved to Tulsa, whereas if Sapulpa were eliminated, the freight train would not even stop there in many cases. The outbound business would be moved as promptly as there was sufficient freight to warrant operating a train. At the present time all power to move the business out of Tulsa has to be fired up at Sapulpa and moved to Tulsa, a distance of twelve miles, in many cases light, to pick up the business. This results in an unnecessary number of light miles, with added expense of switching and fuel. The terminal could be moved from Sapulpa to Tulsa with very little additional expense to West Tulsa. In fact the facilities now at West Tulsa are sufficient to take care of the business. These facilities would, no doubt, be added to from time to time as found necessary. With an expenditure of not to exceed $150,000.00 there could be sufficient yard tracks added to the present yard at Tulsa to take care of the business for a considerable period. The expense of operating terminals has gradually increased during the last fifteen or twenty years, and, at the present time, on the Frisco Railroad the expense in wages of operating the terminals is almost equal to the wages of the employes engaged in hauling the freight between the terminals. [fol. 49] Therefore, it is necessary that terminals be abolished where possible, resulting in expediting movement of business and economy in operation. The modern locomo-

tive is good for a run of from five hundred to seven hundred miles without any great amount of shop attention, and it has been found, by eliminating terminals, operating expenses have been greatly reduced.

Under the present time table, trains Nos. 512 and 507 operate between Ada, Oklahoma and Sapulpa, Oklahoma, connecting with main line trains Nos. 112 and 7 at Sapulpa. Trains Nos. 510 and 511 operate between Sherman, Texas and Sapulpa, Oklahoma, connecting with main line trains Nos. 10, 111 and 9. Effective with the new time table at 12:01 A. M., January 23, 1927, it is proposed to extend the runs of trains Nos. 507, 510, 511 and 512 from Sapulpa into Tulsa, connecting with the main line trains at Tulsa instead of Sapulpa. This, for the reason that it will better serve the people enroute from the south and west moving into Tulsa, and the people moving out of Tulsa to the south and west, avoiding a layover and switching at Sapulpa. Furthermore, it will reduce the delays to main line trains, which are now delayed at Sapulpa, handling baggage, mail and express, and which main line trains are further delayed at Tulsa, handling baggage, mail and express for the connecting lines. Under the new arrangement, all the baggage, mail and express will be handled at Tulsa and transferred to the connections at Tulsa. The operation of the extension to these trains will in no way affect the present facilities at Sapulpa or Tulsa. It will simply mean that the crews now terminating at Sapulpa, will run through to Tulsa, and the crews now taking the trains at Sapulpa will take them out of Tulsa. This affects seven crews. The railroad and shipping facilities at Sapulpa will not be affected in any manner. The method of operating these passenger crews through Sapulpa is no different than crews are being operated at the present time on other trains. For example, our passenger crews are operating through between Tulsa, Oklahoma and Holdenville, Oklahoma, on [fol. 50] trains Nos. 525 and 526, and we have main line conductors and brakeman running through Sapulpa on trains operating between Oklahoma City and Kansas City, Oklahoma City and Monett, and Oklahoma City and Tulsa.

If the time card or schedule contemplated to be in force by the Company on the 23rd day of January of this year,

is enjoined, and the Company is not permitted to put that timecard in force, it will seriously interfere with the timecard which was prepared in order to make service effective throughout the entire line and through six or seven states, and will therefore, seriously impair the service.

The removal of the division point now at Sapulpa to Tulsa will leave the same facilities for the traveling and shipping public as now exist at Sapulpa. The establishment of division points along the line of an interstate railroad is primarily for the purpose of increasing the facilities for handling interstate and intrastate commerce. Division points are established at one place or the other according to the necessity of traffic and for the purpose of facilitating that traffic. A division point established one year may not be a proper division point the following year. At an early day, division points were more numerous and closer *go*-ether by reason of the inferiority of the motor power and the tracks, but in these modern days, by reason of improved trackage and improved motor power, division points are constantly lengthened, and an effort is made, wherever posible in the interest of economy, to abandon as many division points as practicable. The establishment of division points is never made for the convenience of either the passenger or the shipper, but is made, as said above, for the purpose of facilitating the commerce coming to the railroad. It is a fact that the shipping public is constantly demanding better service and more dispatch in the movement of freight and that the traveling public is demanding faster trains and fewer stops in order that they may reach the busy centers on interstate railroads, and in order to satisfy this growing demand of the traveling and shipping [fol. 51] public, great competition has arisen between railroads and therefore, it is necessary for any particular railroad to meet these demands in order to hold its business.

As already said, division points are established for the purpose of bringing about more efficient service on the part of the railroad and if the railroad is not permitted to select the points at which it will establish divisions, or is not permitted to leave a point where division has been established, if such division is no longer practical from a standpoint of business or economy, great confusion will result in the management or trains, great delay will occur in the move-

ment of freight and passengers, and it always means a greater added expense.

With reference to the location of shops at any particular point, I may add that the shops are located for repair purposes and for keeping in good running order all the equipment used in the interstate commerce on this railroad. A very large percentage of the cars moving on this railroad is interstate commerce. The shops, of course, are therefore, a necessary incident to interstate commerce in order to keep the equipment in proper condition to move the cars, and in the natural course of things, must, in nearly every case, be located at division points. Naturally the traveling public nor the shipping public, nor those who have business with the railroad, are effected by the location of the repair shops. The public convenience is in no way served by the location of the repair shops, but they are simply a necessity adjunct to all the other instrumentalities of commerce in order to make possible the proper movement of that commerce.

The division point at Sapulpa was established a great many years ago. At that time, the Frisco railroad was just entering the Indian Territory, and for many years Sapulpa was the end or terminus of the line. For that [fol. 52] reason, it was natural and practical to establish a division point at Sapulpa, but since then the population of the country through which the railroad ran, has vastly increased — the business interest of the country *and* very much expanded. Large cities have grown up on the line of the railroad. Tulsa, a city of more than one hundred thousand people, Oklahoma City, a city of more than one hundred thousand people; Tulsa only fourteen miles from Sapulpa and Oklahoma City about one hundred miles. The change in population, the change in volume of business, the growth of cities, and all these things, have made it absolutely necessary in the efficiency and economy of the service to readjust division points, to abandon some and acquiring others, and it is these changes in conditions that now make it imparative for the railroad company to move its division point from Sapulpa.

Further affiant saith not.

F. H. Shaffer.

Subscribed and sworn to before me on this the 18th day of January, 1927. June E. Hedgcock, Notary Public. My commission expires January 27, 1929. (Seal June E. Hedgcock, Notary Public, Oklahoma Co., Okla.)

[File endorsement omitted.]

[fol. 53] In United States District Court

[Title omitted]

Affidavit of Fred Capshaw et al.—Filed January 19, 1927

Fred Capshaw, Frank C. Carter, and C. C. Childers, being duly sworn, depose and say that they are the members of the Corporation Commission of the State of Oklahoma, and defendants in the above entitled cause; that the records in the office of the corporation commission show that on the 5th day of February, 1917, there was filed in the office of the corporation commission a complaint entitled "J. F. Lawrence and C. C. Taylor, complainants, vs. St. Louis & San Francisco Railway Company, a corporation, defendant"; a copy of which, omitting signatures and filing marks, is in the words and figures following:

[fol. 54] Before the Corporation Commission of the State of Oklahoma

No. —

J. F. Lawrence and C. C. Taylor, Complainants,

v.

St. Louis-San Francisco Railway Company, a Corporation, Defendant

Complaint

The complainants in said cause respectfully show that they are citizens and residents of the city of Sapulpa, Oklahoma. That at the mass meeting of the citizens of Sapulpa

held on Saturday, the 3rd day of February, 1917, and attended by approximately 150 of the tax-payers of said city they were selected as a committee on behalf of the citizens of Sapulpa to file this complaint with the Corporation Commission, the said Lawrence being elected chairman of said meeting, and said Taylor secretary, and for themselves as citizens and tax-payers of said city on behalf of said mass-meeting and on behalf of the railroad employees and all the inhabitants of said city they file this complaint.

The railroad now owned by St. Louis-San Francisco Railway Company was originally constructed from the East into what was then the town of Sapulpa, approximately 25 years ago. At that time Sapulpa was in the Indian Territory and was a mere village, and the section of the country thereabouts was sparsely inhabited. At said time the town of Sapulpa was made a division point, it being the terminus of the railroad and has remained a division point ever since. Repair shops were located by said railway company or its predecessor in title at the time said road was built to Sapulpa, and they have remained there ever since, growing in importance and capacity. About the year 1897, said railroad was extended from Sapulpa in a southwesterly [fol. 55] direction to Oklahoma City in what was then Oklahoma Territory, and in 1901 the railroad was extended in a Southerly direction to the Red River, thus giving lines running towards the West and towards the South and making Sapulpa the converging point for the Southern and Southwestern traffic.

Since that time the city of Sapulpa has grown rapidly and its growth and population have largely measured and increased the business of said railroad company, said company now employing in the shops and on the trains making this a division point approximately 600 men, most of whom have their families locatd at Sapulpa and supporting a population of approximately 3,000 people. Approximately 50% of the employees of said railroad company own homes in the city of Sapulpa and many of them have been residents and inhabitants of said city for many years.

The said railway company now propose to move its shops and division point from Sapulpa to West Tulsa, Oklahoma, and these complainants say that said removal should not be allowed for the following reasons:

1. The location of said shops in West Tulsa is in the valley of the Arkansas River and on ground that has overflowed in the past and is subject to overflow and is an unhealthy location. That the 3,000 men, women and children dependent on said railroad company ought not to be subjected to the dangers of sickness and disease by removing them to an unhealthy location. That the city of Sapulpa is a healthy and pleasant place to live.

2. That the employees of the said railroad company and their families wish to remain in Sapulpa and are opposed to moving, and that their position has already been expressed by the action of the four brotherhoods, that is to say, the Brotherhood of Railroad Trainmen, the Brotherhood of Railroad Conductors, the Brotherhood of Railroad Fireman and the Brotherhood of locomotive engineers.

3. From the beginning the city of Sapulpa has time and again granted various streets and alleys and the citizens [fol. 56] thereof have furnished other real estate for the use of said railway company, and all of said grants have been with the understanding at all times that the city of Sapulpa should be and remain a terminal point, and removal at this time would be an act of bad faith.

4. On the lines running from Sapulpa westerly, Oklahoma City is the next division point, being a distance of 101 miles from Sapulpa. On the lines running from Sapulpa to the South, Francis is the next division point at a distance from Sapulpa of 102 miles. On the lines running from Sapulpa towards the East Afton is the next division point, being a distance of 90 miles. West Tulsa is on the lines from Sapulpa on the East at a distance of 15 miles, so that a removal of the division points to that place would shorten the Afton division to 76 miles, would lengthen the Oklahoma City division to 115 miles, and the Francis division to 117 miles. That the pay of railroad men is based on divisions of 100 miles each, and that it is customary throughout the United States for divisions to be approximately 100 miles apart.

5. School and church facilities have been built up at Sapulpa based on the presence of approximately 3,000 people maintained directly by said railroad division, while

there are no school and church facilities at West Tulsa to take care of the children of said operators.

Wherefore the complainants pray that an order may issue prohibiting said railway company from moving said division point and shops, or either of them, until the final hearing in this cause and that notice be given to said railway company of the time and place of said hearing and that at said hearing said railway company be prohibited from permanently moving their said shops or division point from the city of Sapulpa to West Tulsa or elsewhere.

—— ——, Attorneys for Complainants.

[fol. 57] State of Oklahoma,
Oklahoma County, ss:

Before me, Emma Seberger, a Notary Public in and for said county and state, personally appeared J. F. Lawrence who being duly sworn deposes and says: That he is one of the complainants in the foregoing complaint; that he is familiar with the facts therein stated and the allegations therein contained and that the same are true.

—— ——.

Subscribed and sworn to before me this 5th day of February, 1917. —— ——, Notary Public. My commission expires January 12, 1921.

[fol. 58] That when said complaint was presented to the commission, the records of the commission show that an order was made setting said cause down for hearing and prohibiting the Railway Company from removing its division point and shops from the City of Sapulpa until the further order of the commission; said order, omitting caption, signatures and filing marks, being in the words and figures following:

"This cause came on to be heard on this 5th day of February, 1917, upon the complaint of the complainants and their application for temporary order and the same being considered by the commission, it is ordered that said cause be set down for hearing in the District Court room at Sapulpa, Oklahoma, at ten o'clock A. M., on February 19,

1917; that notice be given the defendant as provided by law and that in the meantime the said defendant and all its officers, agents and employees, until the further order of the commission, be and they are hereby prohibited from moving the division point and shops of said Railway Company or either or any of them which are now located at Sapulpa, Oklahoma, from their present location.

"It is further ordered that a copy of this order be served on the defendant.

"Done at Oklahoma City, Oklahoma, on this the 5th day of February, 1917."

That thereafter a hearing was held, and much evidence was taken, but before any decision was reached by the commission, the Legislature of the State of Oklahoma in its Session in 1917 passed the act quoted in the bill of complaint in this cause; that after the passage of said act no further proceedings were had in the cause pending before the corporation commission, and no further action was taken by the Railway Company to remove its shops, terminal and division point from the City of Sapulpa until towards the close of the year, 1926; that on the 29th day of December, 1926, there was filed in said cause still pending before the corporation commission the motion, which, omitting signatures and filing marks, is in the words and figures following, to-wit:

[fol. 59] BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

No. 2812

J. F. LAWRENCE and C. C. TAYLOR, Complainants,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Defendant

Motion

Come now the complainants on behalf of themselves, of the Chamber of Commerce of the City of Sapulpa, and of the citizens of said City, and respectfully show to the Commission that in this cause on the 5th day of February, 1917,

an order was entered by the Commission prohibiting the defendant and all of its officers, agents and employes, until the further order of the Commission, from moving the division point and shops of said railway company, or either or any of them, which were then located at Sapulpa, from their present location. That said order has heretofore been complied with and is still in force. That the Legislature of 1917 passed an act prohibiting any railway company from removing its shops or division points which have been located at any place in this state for a period of not less than five years, without previously securing the permission of the Corporation Commission, and providing for procedure and a hearing with reference to any such removal. That notwithstanding said order and said act of the legislature the defendant has issued orders directing that the division point for all its passenger trains be changed from Sapulpa to Tulsa on the first day of January, 1927, and that it is the purpose of the defendant, as complainants are advised, to remove its shops and division [fol. 60] point from the City of Sapulpa to the City of Tulsa or West Tulsa. That said shops and division point have been located at Sapulpa for more than five years, and as shown by the original petition in this cause, have been located at said place for approximately thirty years.

Said defendant has not filed an application with the Corporation Commission, as required by the Act of 1917 (Comp. L. 1921, Sections 3482 et seq.), nor has it taken any steps to comply with said act, nor has the order made by this Commission heretofore recited been at any time modified or set aside, but said order is still in force and effect.

Wherefore, the complainants pray that a time may be fixed by the Commission for hearing this application, and that in the meantime the said defendant be prohibited from changing the division for its passenger trains or altering the runs on said trains from the City of Sapulpa, or from taking any other steps towards the removal of its shops or division point now located at the City of Sapulpa.

—— ——, Attorneys for Petitioners.

[fol. 61] STATE OF OKLAHOMA,
Oklahoma County, ss:

Before the undersigned, a notary public in and for said county, personally appeared T. L. Blakemore, who being duly sworn says that he is one of the attorneys for the petitioners above named, that he has read the foregoing application and that the facts therein stated and the allegations therein contained are true.

——— ———.

Subscribed and sworn to before me this — day of December, 1926. ——— ———, Notary Public. My commission expires ——— —, ———.

[fol. 62] That upon the presentation of said motion an order was made by the corporation commission requiring notice to be served upon the Railway Company, setting said cause for hearing on January 17, 1927, and in the meantime ordering the Railway Company not to take any further steps towards removing its terminal from the City of Sapulpa; a copy of said order being contained in the bill of complaint filed herein.

Affiants further say that the corporation commission has not concluded the hearing of said cause; that no evidence has been taken since the filing of the motion last referred to; that the defendant Railway Company has never offered any evidence in said proceeding; that it has never applied to the corporation commission for authority to remove its railroad shops or division point from the City of Sapulpa, either in the case now pending before the corporation commission or in any other proceeding, nor has it made any showing or taken any steps of any kind to comply with the Act of the Legislature of 1917, quoted in the bill of complaint.

Affiants further say that the corporation commission, and that affiants, personally, have not decided the case, nor have they reached a conclusion as to the removal of the division point and shops from the City of Sapulpa, and naturally could not reach a conclusion until the application had been made, the evidence considered, and the cause submitted to the commission; that if, and when an application is made by the Railway Company for permission to remove its shops and division point from the City of Sapulpa, it

will be the duty and purpose of the corporation commission to hear said application in accordance with the statute, to consider the same and the evidence presented, and to make such order in the case as right and justice require; and that until such application and hearing, the corporation commission and the members thereof do not know what the order will be, and cannot tell, and do not know whether the [fol. 63] application will be granted or refused.

Fred Capshaw, F. C. Carter, C. C. Childers.

Subscribed and sworn to before me this 13 day of January, 1927. E. D. Hicks, Jr., Notary Public. My commission expires 5/8/29. (Seal.)

[File endorsement omitted.]

[fol. 64] In United States District Court

Affidavit of J. A. Boyd—Filed January 19, 1927

State of Oklahoma,
County of Creek, ss:

J. A. Boyd, of legal age, being first duly sworn, on oath deposes and says:

That he has been a resident of Sapulpa, Oklahoma, since August 2, 1900; that he was a member of the City Council in 1902-1903; and was Chairman of the Water Committee of said Council; that during the year 1902 Sapulpa built its first water works plant; while this plant was under construction the question of water supply for the Frisco Railway Company came up; affiant was instructed by his fellow members to negotiate with the Frisco Railway relative to furnishing water for their use at this terminal. By correspondence through the regular channels, this matter reached the office of Mr. Davidson, who was Vice-President in charge of Maintenance of Ways under whose jurisdiction this matter came; Mr. Davidson met with the Water Committee of the City Council of the City of Sapulpa and stated that they were interested in making such contract, but would want to know that we had a sufficient supply for a

number of years and also stated that they intended to materially increase the terminals at this place. At our suggestion, Mr. Davidson put us in touch with a firm of engineers in St. Louis, namely, Breneke & Fay, and suggested that we have them as disinterested parties to make a survey of our water shed to determine the possible supply and recommend the necessary storage facilities. This we did and on their recommendation we built an additional dam on Rock Creek at or near where the present pump station is located, and by reason of this additional dam we were forced to build a bridge across Rock Creek on the William-Sapulpa road, northwest of Town at our own expense. As a result of various conferences and the building of additional storage capacity, a satisfactory contract was made between the City of Sapulpa and the Frisco for a water supply.

[fol. 65] Affiant further says that during the year 1903, while he was still a member of the City Council that the Frisco, by its attorney, Mr. Fred Pfendler, and its engineer, Mr. Jack Taylor, and probably other representatives, presented to the City Council a map showing a large terminal, including additional round house and other facilities, with probably 32 tracks across Main Street, as then laid out and asked the City Council to vacate and close Main Street, demonstrating to the council that it would be impossible to build such a terminal and keep Main Street open. The building of this terminal as outlined appeared to be of such magnitude that the Council considered it necessary, and by ordinance, did, vacate and close Main Street.

Affiant further states that in all these discussions, when the matter of permanency, was brought up, the magnitude of the improvement was held up to us as sufficient guarantee for the permanency of the terminal.

Further affiant saith not.

J. A. Boyd, Affiant.

Subscribed and sworn to before me this 17th day of January, 1927. Sylvia Arnett, Notary Public. My commission expires January 31, '29. (Seal.)

[File endorsement omitted.]

[fol. 66] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF C. C. WARREN—Filed January 19, 1927

STATE OF OKLAHOMA,
Creek County, ss:

C. C. Warren being first duly sworn deposes and says:

That he has been a resident of Sapulpa since the year 1903; that for several years prior to the time he came to Sapulpa and for several years thereafter he was in the employ of the Frisco Railroad Company on its Oklahoma line running into Sapulpa from Afton and the northeast.

Affiant further says that the said St. Louis and San Francisco Railroad Company in the year 18— built its line of railroad into what is now northeastern Oklahoma, then the Indian Territory; that the terminus of said run at that time was the Town of Vinita; that thereafter in the year 18— said line of railroad was extended south across the Arkansas River to Red Fork, and a short time thereafter was extended to the Town of Sapulpa; that said extension was made across the Arkansas River to the south for the purpose of taking care of the considerable cattle industry, which had then grown up south and west of the Arkansas River in the then Indian Territory, and the Territory of Oklahoma; that Sapulpa became the terminus of said road and so remained the terminus of said road until the year 1898 and became the most important shipping point on said road in the Indian Territo-y; that Sapulpa remained the terminus of said road until in the year 1898, when said railroad company extended its line to Oklahoma City; that up until this time said railroad had made but small outlay in the way of roundhouse, yards and other terminal facilities; that in the year 1900 said railroad company, through its president, general manager and other managing officials represented to the Town Officials of the Town of Sapulpa and to its citizens that in the event the Town of Sapulpa and its citizens would procure the right-of-way through the eastern portion of said town and for some 7 miles to the south and further procure additional grounds for building of yards, shops, roundhouse and other terminal facilities for said railroad, that the said railroad company would

[fol. 67] extend its lines from Sapulpa south through the Indian Territory across Red River to Texas, and that furthermore it would establish its shops, roundhouse and other division facilities at Sapulpa. That accordingly at the instance of said railroad company the Town of Sapulpa closed up all streets running north and south across the town, for a distance of one-half mile an either side of the main business section of the town and two streets running east and west through said town; in furtherance of said agreement with said railroad company, said town and its said citizens procured the right-of-way through said town and for some 7 miles to the south thereof, wholly at the expense of said town and of said citizens; that said citizens further gave to said company, free of cost to it, some 20 acres of ground for additional terminal purposes.

Affiant further states that though plans were made and submitted in 1902 by said company for the enlargement of its roundhouse, shops, yards and other facilities, said company had made meager improvements as late as 1907; that thereafter in about 1909, while said company was still adding to its terminal facilities, the president of said company made representations to the citizens of Sapulpa, that unless there was provided an adequate water supply, sufficient to meet the contemplated needs of said railroad company for its enlarged terminal facilities, that the said enlarged plans could not be carried out; that accordingly said town formulated plans to erect additional water facilities at a cost of about $100,000.00 and submitted said proposed plans to the officials of said company; that upon said plans being submitted the said officials raised objections that said plans were entirely inadequate and requested that a survey be made by disinterested engineers, which was accordingly done and the plans of said engineer which called for expenditure of about $235,000.00 were accepted and the water plant constructed, which cost said city the sum of $235,000.00; that it became necessary for the city of Sapulpa to vote bonds in order to meet said expenditure, all of which was well known to the Railroad Company throught its managing officials.

[fol. 68] Affiant further states that he is informed and believes that since the construction of said additional water

works referred to in the preceding paragraph that the City of Sapulpa has spent a further sum of about $50,000.00 in procuring additional facilities and such expenditure has been made through the insistence of the managing officials of the Frisco.

Affiant further states that he is informed and believes that the St. Louis-San Francisco Railway Company came into existence through a reorganization of the affairs of the St. Louis and San Francisco Railroad Company, who was the builder of said line of railroad as herein above set forth; that the St. Louis-San Francisco Railway Company is the beneficiary of all the expenditures of the City of Sapulpa made in behalf of said railroad and is, and has been, ever since it came into existence, profiting by the inconvenience that the City of Sapulpa and its citizens are being made to endure by virtue of the closing up of said streets as set forth hereinabove. That it has full knowledge of all the facts detailed above and has profited by said agreements made for its benefit.

Affiant further states that while he was yet in the employ of the Frisco Railroad Company, Mr. Gray, who was at that time filling the office of Vice-President of said company, urged and advised this affiant, as an employ- of the railroad company to purchase a home in Sapulpa and invest in the real estate in said town, and further told him that Sapulpa was the logical point for a division on said road and would remain a division point and general repair shop, and that the Frisco would continue to make large improvements at said point; that your affiant, in reliance upon said advice, purchased a home in said town and became the holder of considerable real estate therein; that affiant knows that such advice was given to other employes of the Frisco Railroad Company, and that the managing officials of said company have frequently urged and advised the employes to purchase and build homes in Sapulpa; that accordingly many employes of said company have invested in homes and other real estate in the Town of Sapulpa; that more [fol. 69] than 75 per cent of the employes of said company own their own homes in said town.

Affiant further states that if the division point is removed from Sapulpa to West Tulsa, that it would necessitate the removal of most of said employes from Sapulpa and would

necessarily cause them to have to sell their homes; that said homes and said real estate could not be sold except at a tremendous sacrifice, owing to the fact that the removal of said terminal would cause property values in Sapulpa to greatly depreciate; that there are some 700 employes of said Frisco living in Sapulpa; that they, together with their families comprise about 3,000 of Sapulpa's population of 12,000; that many of the employes of said company are getting well along in years, and that it would be an especial hardship upon the old men among said employes to compel them to give up their homes which they have spent the better part of a life time in building.

Affiant further states that the employes of said railroad company are resentful of the attempt of the Frisco Railroad Company to remove the terminal from Sapulpa; that said employes are objecting to said move, not only because of the great loss they would incur by having to sell their property at a great sacrifice, but on the further grounds that in changing said division point the Frisco is bringing about the breach of a contract, which it has with the several brotherhoods of railroad men, whereby it is agreed that Sapulpa shall be the terminal point on said road; that a breach of said contract by the company is regarded by said employes as a serious offense and will be resented not only by the employes of Sapulpa Division of said railroad, but by the employes of said railroad over its whole system and will, almost inevitably, lead to serious labor disturbances and thus seriously impair the operation of said railroad system, if in fact it does not bring about an actual disruption of the business of said railroad company.

Affiant further states that he has spent 30 years of his life as an employee of various railroads, most of which time he was engaged in that branch of railroading which has to do with the movement of trains; that he has at different [fol. 70] times held the positions of switchman, brakeman, freight conductor and yard master; that as conductor he has run freight trains out of the Sapulpa division; that he has been yard master at Sapulpa, Monett, Missouri, and other places; that affiant is well acquainted with the yards, machine shops and other facilities at Sapulpa, and other

terminal points on the Frisco Railroad, and other railroads as well; that Sapulpa is the logical point for the location of the roundhouse, machine shops and other necessary terminal facilities; that the logical distance between terminal points is about 100 miles; that it is 101 miles from Sapulpa to Oklahoma City, where there is a division poin on the Oklahoma City Branch of said road; that it is 101 miles to Francis, Oklahoma, where there is a division point on the Red River Branch of said road; that it is 90 miles from Sapulpa to Afton, where there is a division point on said road; that the location of the terminal which is now at Sapulpa, at West Tulsa, would necessitate a "double ha/l" of all passenger and freight traffic, which comes from the Red River branch of said road to the Oklahoma City branch and of all traffic from the Oklahoma City branch to the Red River branch; that a large amount of traffic, both freight and passenger from said Red River branch passes over to the Oklahoma City branch at Sapulpa; that a large portion of the traffic from the Oklahoma City branch of said road passes over to the Red River branch at Sapulpa; that it would entail the loss of thousands of dollars per year to thus "double ha/l" said freight and passengers from Sapulpa to West Tulsa and back again; that it would be impracti-ble and unprofitable under the present eight-hour law to attempt to lengthen out the terminals on said road.

Affiant further says that the Frisco terminal yards at Sapulpa are well situated as any yards which said company could make at West Tulsa; that said yards at Sapulpa are not on a curve but that the same are on strainght lines; that it is not a fact that a hill on the north side of said yards prevent their enlargement; that there is ample ground to the west of said yards parallel with the Oklahoma City [fol. 71] branch of said line for the purpose of all necessary extensions; that said switch lines can be extended at least one mile further than at the present with comparatively small cost; that the yards could be enlarged at Sapulpa to meet any necessary and larger demands of said road at a much less cost than like enlargement could be made at West Tulsa; that there is ample level land along the line of rail-

road to the north and east of Sapulpa for the establishment of any necessary switch yards that might be needed for terminal purposes; that said land can be procured at a very reasonable price.

Affiant further states that the yards of the Frisco at West Tulsa are subject to overflow from the Arkansas River; that this affiant has on several occasions seen the tracks of said company flooded from the hill just north of the Red Fork nearly to the bridge of said company across the Arkansas at West Tulsa; that the flood waters stand stagnant for many weeks west of the yards of said company at West Tulsa; that West Tulsa is located in the bottoms of the Arkansas River and is not a desirable residential town; that this affiant is reliably informed that most of the employees of the Frisco at West Tulsa live in either Red Fork or Tulsa.

Further affiant saith not.

C. C. Warren, Affiant.

Subscribed and sworn to before me this 18th day of January, 1927. Sylvia Arnett, Notary Public. My commission expires January 31, 1929. (Seal.)

[File endorsement omitted.]

[fol. 72] In United States District Court

Affidavit of F. E. Lawrence—Filed January 19, 1927

State of Oklahoma,
County of Creek, ss:

F. E. Lawrence, being duly sworn, deposes and says:

That he is a civil engineer by profession, being a graduate of School of Engineering of the University of Missouri; that he has had twelve years practical experience in his profession; that in May 1922, he became city engineer of the City of Sapulpa; in which capacity he acted until in May 1923, when he became City Manager of the City of Sapulpa, which position he still holds.

Affiant further states that in the year 1923, owing to serious complaint made by engineers for the Frisco Railroad Company, relative to the amount of *sale* water coming into the reservoir of the Sapulpa water System and thus to the tanks of the railroad company and the resulting injury to the boilers of the company's engines, the City of Sapulpa set about to provide the railroad with water as nearly free from minerals as possible; that accordingly the City made an additional expenditure to the amount of about seventeen thousand dollars in raising its dam on Euchee Creek, and purchasing additional lands covered, by reason of said dam's being raised; that thereafter in the year 1924 said City, in a further effort to satisfy the demands of the engineers of the said railroad company built an additional dam on Euchee Creek at an additional cost of approximately $10,000.00; that as a result of these expenditures the City has procured an ample supply of water for said railroad company; that the water now supplied to said railroad company is as suitable for use as either Spavinaw or Shell Creek Water, which the company uses at West Tulsa.

Affiant further states that the City of Sapulpa furnishes said water to said railroad company at a flat rate of ten cents per thousand gallons; that said price is actually below the cost of delivering same; that the actual cost of delivering water in Sapula is about seventeen cents per thousand gallons, which sum includes the cost of pumping, interest on bonds, depreciation on plant, etc.

Affiant further says that from the books of the City of Supulpa, which books are accurate, from the first of June, [fol. 73] 1926, to the 31st day of December, 1926, the City of Sapulpa has delivered to said railroad company at Sapulpa, 81,388,000 gallons of water at a cost of 10 cents per thousand gallons, or a total cost of $8,138.80; that during said period of time said City furnished to all consumers, including the Frisco, a total of 254,614,000 gallons of water; that the total revenue from the water supplied to all patrons including the Frisco for said period of time amounted to the sum of $45,214.62; that while the Frisco uses 31.96 per cent of all water supplied by the Frisco, they pay but about 18 per cent of the whole revenue derived therefrom; that while affiant has not made accurate computations for all of the years he has been with the City of

Sapulpa the above figures represent about the relative condition for all of said period of time since 1923, in other words, since 1923 the Frisco has been using practically a third of the water supplied by the City of Sapulpa and has been paying but about 18 per cent of the revenue derived from sale; and that the cost of delivering said water through said period of time from 1923 to date has been about the same as for said seven months from June 1, 1926, to December 31, 1926, or about 17 cents per thousand gallons.

Further affiant saith not.

F. E. Lawrence, Affiant.

Subscribed and sworn to before me this 18th day of January, 1927. Sylvia Arnett, Notary Public. My commission expires January 31, 1929. (Seal.)

[File endorsement omitted.]

[fol. 74] In United States District Court

Affidavit of H. M. Watchorn— Filed January 19, 1927

State of Oklahoma,
County of Creek, ss:

H. M. Watchorn, being duly sworn, deposes and says:

That he is a resident of Sapulpa and has been since the year 1901; that from 1901 to 1904 he was roadmaster for the Red River Division of the Frisco Railroad Company; that in 1904 he resigned his position with the Frisco and became actively identified with the affairs of Sapulpa; that in 1905 he was elected mayor of the Town of Sapulpa; that ever since said time he has kept in close touch with the development of the City of Sapulpa, and has especially kept in touch with the relations between the City of Sapulpa and the Frisco Railroad.

Affiant further says that while he was in the employment of said company, in the capacity of roadmaster, Mr. Gray, who was at that time general manager of the Frisco Railroad System, in a conversation with reference to a possible

change of the division point from Sapulpa to West Tulsa, told this affiant that no such move would be made, and further advised this affiant to buy a home in Sapulpa; that this affiant shortly thereafter, in reliance on said advice made considerable expenditure in the purchase of a home in Sapulpa; that your affiant has been reliably informed that similar advice and representations have been made by the managing officials of said company to other employees of the Frisco at Sapulpa; that many of such employees have acted on such advice and *has* bought homes at Sapulpa; and that more than seventy-five per cent of such employees now own their homes in Sapulpa.

Affiant further says that along about the year 1905, the officials of the Frisco demanded that Main Street be closed across the Frisco tracks and yards; that at about the same time the question of furnishing adequate water supply for the use of the Frisco was also being pressed by said officials; that these negotiations were usually carried on by the Frisco through Mr. Gray, who was General Manager of said railroad; that he urged the closing of said streets and the furnishing of adequate water as a necessity for the maintainance of the terminals at Sapulpa, and insisted [fol. 75] that the closing of said streets and the furnishing of water was absolutely necessary to the further enlargement of the terminal facilities of said road; that at all times the City of Sapulpa and its citizens have met the demands of said officials; that the City of Sapulpa has never made any change in its water facilities without first taking the matter up with the managing officials of the Frisco; that the first bond issue for water improvements came along about 1904 or 1905; that at that time the plans were enlarged at the suggestion of the officials of the Frisco; that this first issue of bonds for water improvements amounted to $25,000.00; that thereafter, and in about 1908 or 1909, the Frisco demanded more water; that again the matter was taken up with the officials of the company; that the city proposed a plan which required an expenditure of about $100,000.00, which would have provided ample water for the City of Sapulpa and its consumers; that when said plans were submitted to the Frisco officials they were, by such officials, declared insufficient; that said officials in turn demanded improvements which called for an expenditure of $235,000.00;

that again the City of Sapulpa voted bonds for the amount required*quired* and built the facilities demanded; that subsequent to that time, the City has incurred at the instance of said company at different times additional expense for increased water facilities totaling about $50,000.00; that such additional expenditures last mentioned, were not made for the needs of Sapulpa and its citizens, but for the Frisco Railroad Company.

Affiant further states that on many occasions since he has been a resident of Sapulpa, there has been agitations through the press of Tulsa for the removal of the division from Sapulpa to West Tulsa; that usually on such accasions the citizens of Sapulpa would appoint a committee to go to St. Louis and interview the president and other managing officials of the Frisco with reference to such proposed change: that your affiant served on two such committies at different times; that on those occasions the committee [fol. 76] was assured by such officials that there was no intention on the part of the officials to remove said terminals, shops and other facilities, for the reason that said Sapulpa terminal was at its logical place.

Affiant further says that he is familiar with the yards, shops and other facilities at Sapulpa; that said yards are well located; that there is plenty of room for extension to the west, and that the yards can be extended to the west for a mile, if necesary, at a comparative small expenditure; that there is also ample room for a yard east and north of the present passenger station, along the tracks of the company; that said land is to be has at a small sum and is comparatively level, and now has no improvements of any consequence on it; that in the opinion of your affiant Sapulpa is the logical point for the terminal, owing to its relative distance to other terminals to the north, south and west; and that both freight and passenger service can be more economically handled by operating with Sapulpa as a terminal point rather than West Tulsa.

Affiant further states that the yards of said company at West Tulsa are subject to overflow; that he has on several occasions seen the tracks of the Frisco Railroad Company under water from the hill just north of Red Fork almost to the bridge across the Arkansas at West Tulsa; that the overflow water stands stagnant for weeks after floods near the yards of said company in West Tulsa.

Affiant further says that West Tulsa is very undersirable as a location for a residence; that your affiant is reliably informed that very few of the employees who work for the Frisco at West Tulsa, live in West Tulsa, most of them living either in Red Fork or Tulsa.

Further affiant saith not.

H. M. Watchorn Affiant.

Subscribed and sworn to before me this 17th day of January, 1927. Sylvia Arnett, Notary Public. My commission expires January 31, 1929. (Seal.)

[fol. 77] [File endorsement omitted.]

[fol. 78] In United States District Court

Affidavit of H. C. Hughes et al.—Filed January 19, 1927

State of Oklahoma,
County of Creek, ss:

H. C. Hughes, W. B. Key, W. A. Courtney, R. T. Shearer and E. B. Smith, being first duly sworn upon their oaths, say:

During the month of December, 1925 we were serving upon the Railroad Committee of the Chamber of Commerce of Sapulpa, Oklahoma, and because of rumors at that time that the St. Louis & San Francisco Railway Company was considering the removal of the terminals from Sapulpa said committee made an engagement with Mr. J. M. Kurn, President of said railway company at his office in the City of St. Louis, and the said committee did meet with Mr. Kurn on December 12, 1925. H. C. Hughes was Chairman of said committee. At the conference with Mr. Kurn the Committee suggested to him that the rumors of the proposed change of the location of the terminals, and removal of the same from Sapulpa had an injurious effect upon the business conditions of Sapulpa, and that said committee had arranged the conference in order to ascertain whether the rumor was well founded. Mr. Kurn, in substance, made the following statement:

"There is no justification for the rumor; when an important move of that nature is to be made publicity of the same would naturally be given from the executive officers. In my judgment there will never at any time be employed by the Frisco at Sapulpa fewer men than are now employed. Sapulpa is the logical place for the terminals now located there."

Mr. Kurn also stated that the company was considering the enlargement of the terminals and the committee advised him that the Sapulpa Chamber of Commerce had created an industrial fund of $100,000, and that the Chamber of Commerce would be glad to render financial assistance in acquiring any additional land needed. Mr. Kurn informed the committee that while the railway company was considering the purchase of additional lands that it [fol. 79] would be against the interests of the company to give publicity of that fact because it might result in large speculations in lands which were desired and cause the land to be valued at larger prices than the real worth of the same. In general, the whole effect of the conference with Mr. Kurn was that there was not reason for any anxiety on the part of the citizens of Sapulpa as to the removal of the terminals, Salpulpa being the logical place for the terminals then located there.

H. C. Hughes, W. B. Key, Wm. A. Courtney, R. T. Shearer, E. B. Smith.

Subscribed and sworn to before me this 18th day of January, 1927. Era I. Marler, Notary Public. My commission expires April 15, 1930.(Seal.)

[File endorsement omitted.]

[fol. 80] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed January 19, 1927

This matter coming on for hearing on plaintiff's application for a temporary injunction on this 19th day of January, 1927, before the Honorable Arba S. Van Valkenburgh,

Circuit Judge for the Eighth Circuit, and the Honorable Albert L. Reeves, District Judge, and the Honorable Franklin E. Kennamer, District Judge, pursuant to the order heretofore on the 11th day of January, 1927, made by the Honorable Franklin E. Kannamer, District Judge, granting a temporary restraining order herein, and the plaintiff appearing by its attorneys, Stuart, Cruce & Franklin, and the defendants appearing by their attorneys, Judge C. B. Ames, Houston B. Tehee and T. L. Blakemore, and all parties having announced ready for hearing, said matter was by agreement submitted on affidavits introduced in evidence by both plantiff and defendants, and the court having considered said affidavits and having heard argument of counsel both for plaintiff and defendants, is of the opinion that the temporary injunction prayed for by plaintiff herein should be in all things granted, and that the defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma, Frank C. Carter, Fred Capshaw and C. C. Childers, individually and as members of the Corporation Commission of the State of Oklahoma, and all persons similarly situated, and all persons acting with or by the authority of any of said defendants, should be enjoined until further order of this court from proceeding further in a certain action pending before the Corporation Commission of the State of Oklahoma wherein the said J. F. Lawrence and C. C. Taylor are complainants and the St. Louis-San Francisco Railway Company is defendant, said cause being cause No. 2812 of the Corporation Commission of the State of Oklahoma, which said action has [fol. 81] for its purpose the prevention on the part of the said St. Louis-San Francisco Railway Company from removing its shops and division point from the City of Sapulpa and from putting into effect certain changes in the runs of its trains according to its schedule about to be put into effect by said railway company.

Wherefore, it is ordered, adjudged and decreed that said defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma, Frank C. Carter, Fred Capshaw and C. C. Children, individually and as members of the Corporation Commission of the State

of Oklahoma, and all persons similarly situated, and all persons acting with them, their agents, servants, employees and all persons acting by or under their authority or the authority of any of them, and all persons for whom the said J. F. Lawrence and C. C. Taylor appeared in the said above described cause so pending before the Corporation Commission of the State of Oklahoma, be and all of which are hereby enjoined and restrained from prosecuting, hearing or conducting or permitting a hearing to be had, or taking or permitting any further proceedings to be had in the above described cause of action now pending before the Corporation Commission; that said defendants, and each and all of them, are hereby further restrained and enjoined from making promulgating or enforcing, or causing to be made, promulgated or enforced, any order prohibiting the above named plaintiff from removing any of its shops or appurtenances thereto, its division point or any part thereof, or from changing the run of any of its trains named in the schedule above referred to or changing the run of any of the crews on said trains now in said schedule, or doing anything that will in any manner interfere with or prohibit plaintiff from removing its shops or any appurtenances thereto, or its division point or any part thereof, or in changing the run of any of its trains until the further order of this court.

It is the further order of this court that no proceedings had herein or by the Corporation Commission of the State of Oklahoma, or any order heretofore issued by said Corporation Commission, shall in any event prohibit plaintiff from putting into effect on the 23rd day of January, 1927, its train schedule above referred to herein.

This order is to become effective upon the filing by the [fol. 82] plaintiff and the approval thereof of the Clerk of this Court of a bond properly conditioned according to law in the sum of $50,000.

Arba S. Van Valkenburg, Circuit Judge. Albert L. Reeves, District Judge. F. E. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed January 24, 1927

To the Honorable Franklin E. Kennamer, Judge of the District Court of the United States for the Northern District of Oklahoma:

The above named defendants, J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma, Frank C. Carter, Fred Capshaw, and C. C. Childers, individually, and as members of the Corporation Commission of the State of Oklahoma, feeling themselves aggrieved by t interlocutory injunction made and entered in this cause on the 19th day of January, 1927, do hereby appeal from said decree granting an interlocutory injunction to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal be allowed, that citation issue as provided by law, and that a transcript of the record, proceedings, and papers upon which said interlocutory injunction was granted, duly authenticated, may be sent to the Supreme Court of the United States sitting at Washington, under the rule in such cases made and pro-
[fol. 84] vided.

Your petitioners further pray that the proper order touching security be made without superseding the decree referred to, and they tender bond in such amount as the Court may require.

C. B. Ames, T. L. Blakemore, Attorneys for the Defendants J. F. Lawrence and C. C. Taylor. Edwin Dabney, Houston B. Teehee, Attorneys for the Defendants Edwin Dabney, Frank C. Carter, Fred Capshaw, and C. C. Childers.

Order Allowing Appeal

On this the 24 day of January, 1927, the above named defendants presented their petition for appeal, and upon consideration, it is ordered that the appeal be and the same

is hereby allowed upon the giving of a bond for costs, as required by law, in the sum of five hundred dollars.

F. E. Kennamer, Judge of the United States District Court for the Northern District of Oklahoma.

[File endorsement omitted.]

[fol. 85] In United States District Court

[Title omitted]

Assignments of Error—Filed January 24, 1927

Now, on this 22nd day of January, 1927, come the above named defendants, by their solicitors, and say, that the interlocutory injunction entered in the above cause on the 19th day of January, 1927, is erroneous and unjust to the defendants for the following reasons:

1. The Court erred in granting the interlocutory injunction against the defendants in said cause.

2. The Court erred in holding that the Act of the Legislature of 1917, pleaded in the bill of complaint in said cause, is in violation of the Constitution of the United States, and void.

Wherefore, the defendants pray that said decree granting an interlocutory injunction be reversed.

C. B. Ames, T. L. Blakemore, Attorneys for the Defendants J. F. Lawrence and C. C. Taylor. Edwin Dabney, Houston B. Teehee, Attorneys for Defendants Edwin Dabney Frank C. Carter, Fred Capshaw and C. C. Childers.

[File endorsement omitted.]

[fol. 86] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF PRÆCIPE—Filed January 24, 1927

To St. Louis-San Francisco Railway Company, complainant:

You will please take notice that the above named defendants and appellants, will on the 24th day of January, 1927, file with the Clerk of the above named court, together with proof of acknowledgment of service of the same, a præcipe for the portions of the record to be incorporated in the transcript on appeal, a copy of which præcipe is hereto attached and made a part of this notice.

Dated this 22nd day of January, 1927.

J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General of the State of Oklahoma; Frank C. Carter, Fred Capshaw, and C. C. Childers, Individually and as Members of the Corporation Commission of the State of Oklahoma, Defendants and Appellants, by Edwin Dabney, Houston B. Teehee, T. L. Blakemore, & C. B. Ames, Their Counsel.

[fol. 87] Due and timely service of the foregoing notice, together with copy of præcipe attached thereto, is acknowledged to have been made, and is accepted this 22nd day of January, 1927.

St. Louis-San Francisco Railway Company, by Stuart, Cruce & Franklin, Its Attorneys.

[File endorsement omitted.]

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 24, 1927

To the Clerk of the District Court of the United States for the Northern District of Oklahoma:

In making up the record and transcript for the Supreme Court of the United States in the above entitled cause, you are hereby notified as follows:

First

That the appellants elect to have the record herein printed under the supervision of the clerk of the Supreme Court of the United States, and under the rules of that court.

Second

That you will include in the record and transcript only such parts as are herein mentioned, omitting all other parts of the record, that is to say:

(1) The original bill of complaint filed in said cause.

(2) The affidavits filed in said cause by the complainant on the 19th day of January, 1927, towit: the affidavits of James E. Hutchison, C. T. Mason, H. W. Press, H. L. Norman and F. H. Shaffer.

(3) The affidavits filed in said cause by the defendants on the 19th day of January, 1927, to-wit: The joint affidavit of Fred Capshaw, Frank C. Carter and C. C. Childers; and the affidavits of J. A. Boyd, C. C. Warren, F. E. Lawrence, H. M. Watchorn and H. C. Hughes, W. B. Key, W. A. Courtney, R. T. Shearer and E. B. Smith.

[fol. 89] (4) The decree entered in said cause on the 19th day of January, 1927, granting an interlocutory injunction.

(5) The petition for and allowance of the appeal.

(6) The assignment of errors.

(7) Bond on appeal.

(8) Citation on appeal.

(9) Notice of præcipe and this præcipe.
Edwin Dabney, Attorney General; Houston B. Teehee, Assistant Attorney General; T. L. Blakemore, C. B. Ames, Attorneys for Defendants and Appellants.

All formalities of the time and manner of serving the aforesaid præcipe are waived, and the appellee agrees that the præcipe may be filed; that it calls for all papers which should become a part of the record and that the same may be incorporated in the transcript on appeal without further notice to us.

Dated this 22nd day of January, 1927.

St. Louis-San Francisco Railway Company, by Stuart, Cruce & Franklin, Its Attorneys.

[File endorsement omitted.]

[fols. 90 & 91] Bond on appeal for $500, approved and filed January 24, 1927, omitted in printing.

[fols. 92-93a] Citation, in usual form, showing service on Stuart, Cruce & Franklin, filed January 24, 1927, omitted in printing.

[fols. 94 & 95] Præcipe for transcript of record omitted; printed side page 88 ante.

[fol. 96] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 97] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION BY APPELLANTS TO PRINT THE ENTIRE RECORD—Filed February 15, 1927

In compliance with the rule the appellants respectfully state the following points on which they intend to rely:

The errors assigned in this cause are that the court erred in granting the interlocutory injunction, and that the court erred in holding that the act of the legislature of Oklahoma of 1917, herein involved, is a violation of the Constitution of the United States. In presenting these assignments of error the appellants will rely upon the following propositions:

1. This action is prematurely brought.

The act of the legislature in question provides that, after a railroad company has maintained its shops and terminals at any given point in the state for a period of five years, that it cannot remove them until after presenting an application to the Corporation Commission and securing an order permitting it to do so. The appellee in this cause has not presented such an application, has not been denied permission to move its terminals, but by this action is forcing the initial hearing upon the Federal courts instead of the Corporation Commission.

2. The statute involved is a valid exercise of the police power of the state, being enacted for the preservation of the health, safety, and convenience of the railroad employees, of the communities in which shops and terminals [fols. 98-99] are located, and of the general public.

3. The statute involved is a valid exercise of the power of the state to regulate railroads, there having been no assertion of the national power over the subject.

4. The statute involved is not a regulation of interstate commerce, and if it affects interstate commerce at all only does so remotely and indirectly.

In view of the fact that the interlocutory injunction was heard only on affidavits, the appellants request that the entire record be printed, as in the opinion of appellants the entire transcript on file in this cause is necessary for the

proper consideration of the points on which the appellants rely.

—— ——, Attorney General of Oklahoma; —— ——, Assistant Attorney General of Oklahoma; C. B. Ames, T. L. Blakemore, Attorneys for Appellants.

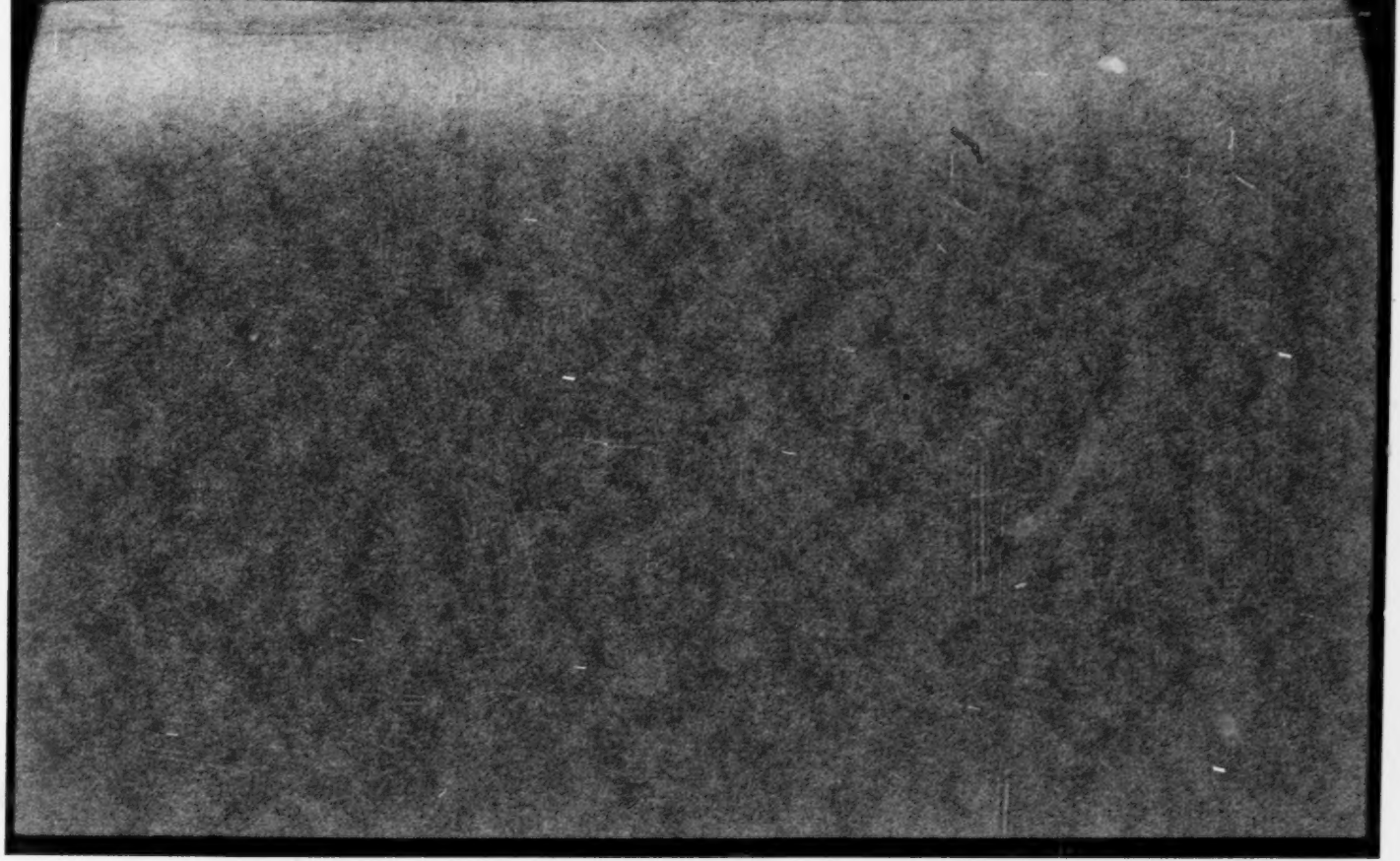
The undersigned attorneys for the appellee hereby accept service of a copy of the above entitled paper, and concur in the request to have the entire transcript printed, waiving the time allowed by the rules for designating additional parts of the record.

Stuart, Cruce & Franklin, Attorneys for Appellee.

[fol. 100] [File endorsement omitted.]

Endorsed on cover: File No. 32,461. N. Oklahoma D. C. U. S. Term No. 894. J. F. Lawrence, C. C. Taylor, Edwin Dabney, Attorney General, etc., et al., appellants, vs. St. Louis-San Francisco Railway Company. Filed February 10th, 1927. File No. 32,461.

(5066)



Supreme Court of the United States

October Term, 1926.

J. F. LAWRENCE ET AL.,
Appellants,
vs.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
Appellee.

No. -------

MOTION TO ADVANCE.

Come now the appellants and move the Court to advance said cause for hearing at the earliest convenient date, and in support of said motion state the following facts:

This is an appeal from an interlocutory injunction in a three judge case restraining the Corporation Commission and the Attorney General of Oklahoma from enforcing a statute of that state. The facts, briefly stated, are as follows:

In February, 1917, upon the application of various citizens of the City of Sapulpa, Oklahoma, the Corporation Commission of the State of Oklahoma made a tem-

porary order prohibiting the St. Louis-San Francisco Railway Company from moving its terminals and shops then located in the City of Sapulpa pending a hearing of the cause by the Commission. Shortly thereafter evidence was offered in said cause by the plaintiffs; but before any evidence had been offered by the Railway Company the Legislature passed an act providing that the shops and terminals of railroad companies which had been located for a period of five years should not be moved unless and until the railroad company applied to the Corporation Commission for and obtained an order permitting such removal. Thereafter, no further proceedings were had in the cause pending before the Corporation Commission until December, 1926, when the plaintiffs in that cause represented to the Corporation Commission that the Railway Company was on the point of moving its shops and terminals from the City of Sapulpa in violation of the statute of the state, and without complying with the statute. Thereupon, the Corporation Commission issued a further temporary order prohibiting the Railway Company from removing its shops and terminals without complying with the statute, and setting the cause down for hearing on the 19th of January, 1927. Thereupon, the Railway Company brought this action in the United States District Court for the Northern District of Oklahoma, seeking to enjoin the members of the Corporation Commission, the Attorney General of the State of Oklahoma,

and the citizens of Sapulpa from hearing the cause pending in the Corporation Commission, and from taking any other or further steps towards enforcing the order theretofore entered, or the Act passed by the Legislature in 1917.

The application for an interlocutory injunction was heard and granted by three Judges, pursuant to Section 266 of the Judicial Code, restraining the defendants in this case—the appellants here—from taking any further steps towards enforcing the order of the Corporation Commission, or the statute of the State, and this appeal brings to this Court for review the order of the three Judges granting the interlocutory injunction.

The appellants, who are the members of the Corporation Commission of Oklahoma, the Attorney General of Oklahoma, and the citizens of Sapulpa, respectfully move the Court to advance said cause for the reason that it is contemplated by Section 266 of the Judicial Code that such a proceeding shall be given precedence and in every way expedited; that in granting the interlocutory injunction the lower court has held an act of the Legislature to be unconstitutional, and in doing so refused to follow the opinion of this Court in *International & Great Northern Railway Co.* v. *Anderson County,* 246 U. S. 424, 433; that under the interlocutory injunction the appellee is free to move its shops and terminals, and that if it does so ir-

reparable injury may be done the railway employees affected, the City of Sapulpa, and its citizens, and the State of Oklahoma.

Appellants believe that the interlocutory injunction was improvidently granted, and in order to protect their rights as speedily as possible, they respectfully pray the Court to advance said cause upon the docket and to hear it at as early a time as the convenience of the Court may permit.

EDWIN DABNEY,
Attorney General of Oklahoma.

HOUSTON B. TEEHEE,
Assistant Attorney General.

T. L. BLAKEMORE,
C. B. AMES,
Attorneys for Appellants.

AMES, LOWE & COCHRAN,
of Counsel.

FILE COPY

NUMBER [illegible]

Supreme Court of the United States

October Term, 1926.

J. P. LAWRENCE ET AL., APPELLANTS,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, APPELLEE.

STATEMENT AND BRIEF OF APPELLANTS.

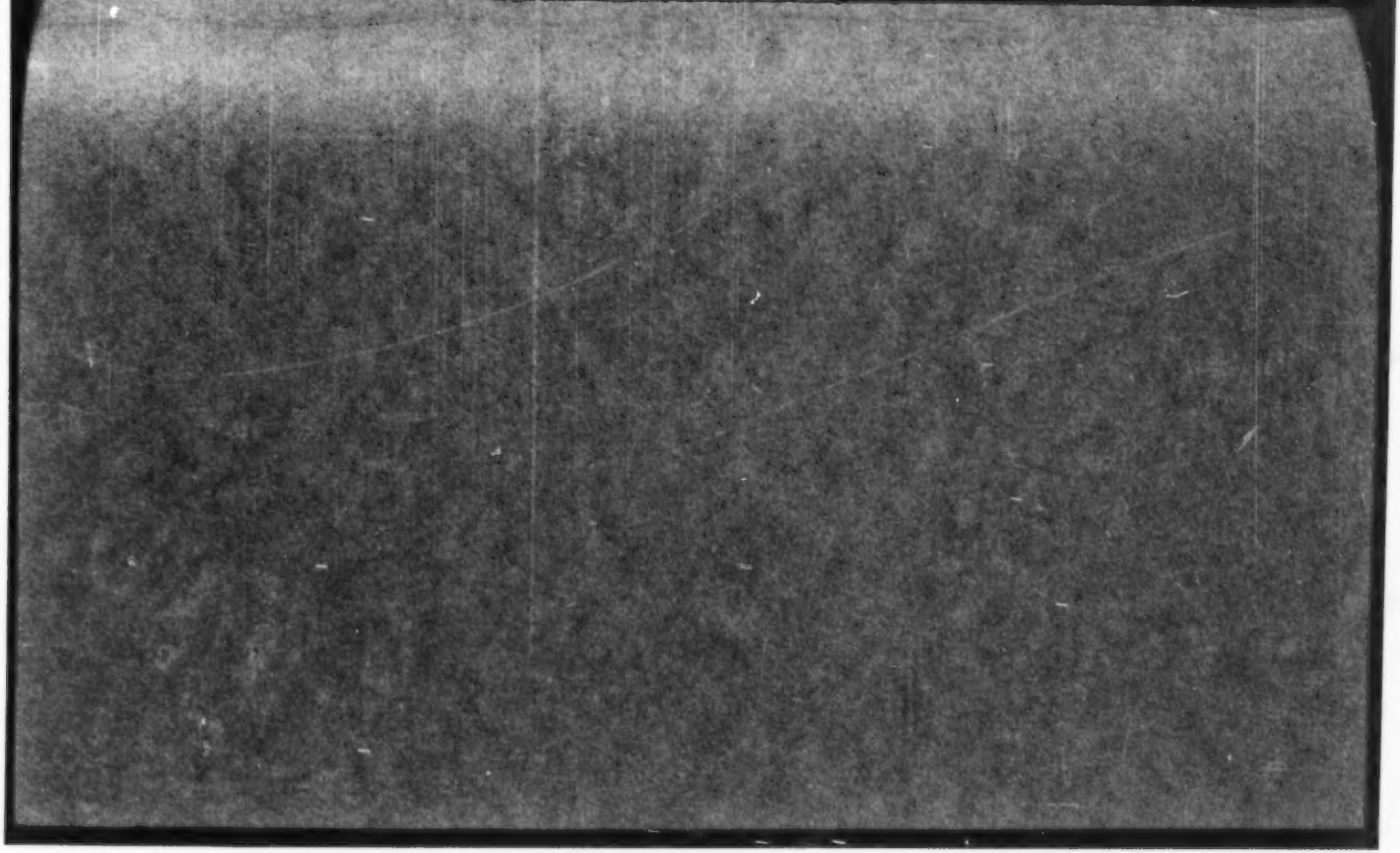
EDWIN DABNEY,
Attorney General of Oklahoma,

HOUSTON B. TEEHEE,
Assistant Attorney General,

T. L. BLAKEMORE,
C. B. AMES,
Attorneys for Appellants.

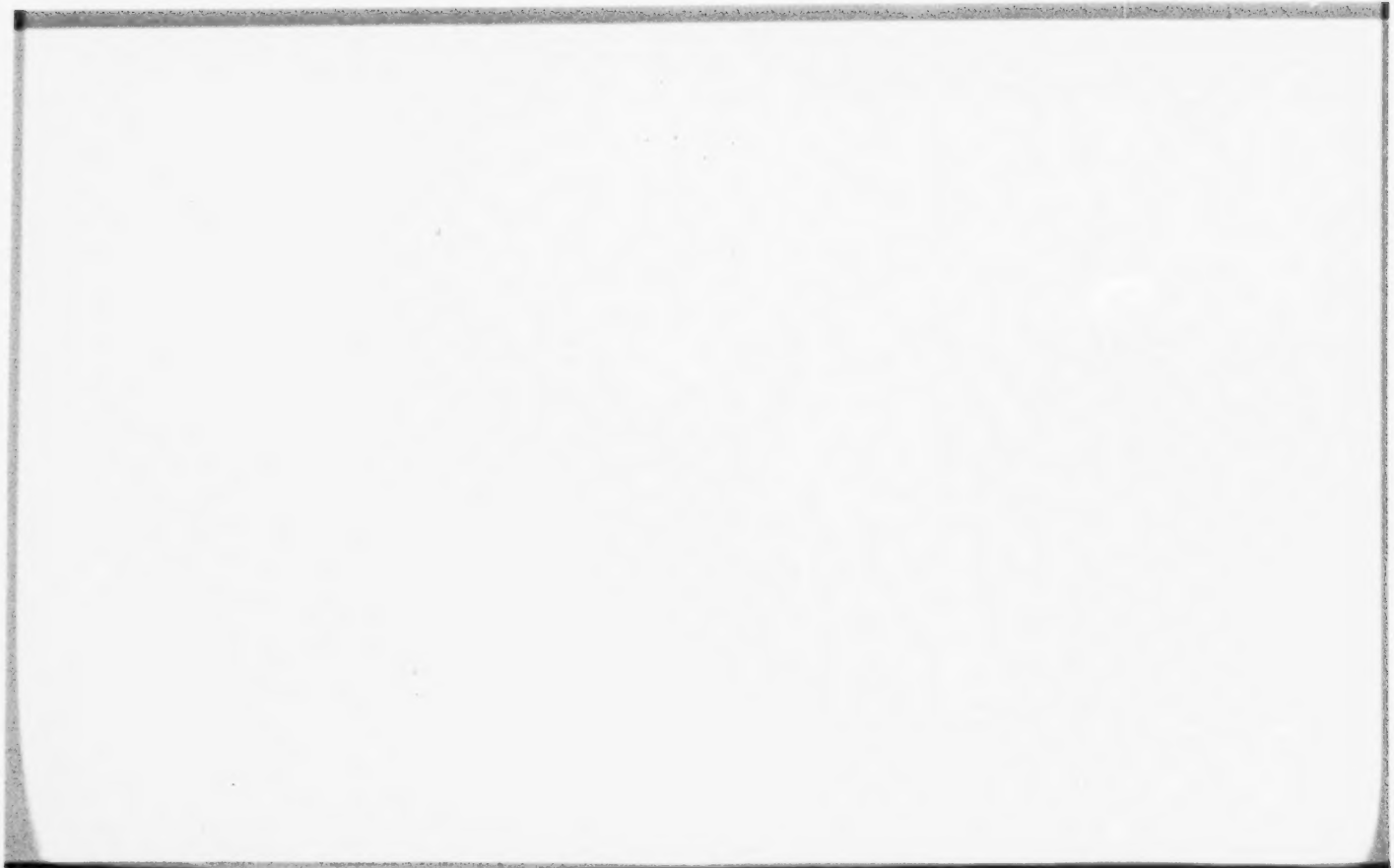
AMES, LOWE & COCHRAN,
of Counsel.

[illegible]



INDEX

TABLE OF CASES.



Supreme Court of the United States

October Term, 1926.

J. F. LAWRENCE ET AL., APPELLANTS,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, APPELLEE.

NUMBER 894

STATEMENT AND BRIEF OF APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from the District Court of the United States for the Northern District of Oklahoma, where an interlocutory injunction was granted by a three Judge Court restraining officers of the State of Oklahoma from further proceeding under a statute of that State, which the Court held to be unconstitutional.

The suit was brought by St. Louis-San Francisco Railway Company, hereinafter referred to as the Railway Company, against J. F. Lawrence and C. C. Taylor, as citizens of the City of Sapulpa, Edwin Dabney, as Attorney General of Oklahoma, and Frank C. Carter, Fred

Capshaw, and C. C. Childers, individually and as members of the Corporation Commission of Oklahoma, to restrain them from taking any steps in a cause then pending in the Corporation Commission, or in any other proceeding, to enforce the provisions of the Shops and Division Point Act of the Oklahoma Legislature. This act provides that where railroad shops or division points have been located for a period of five years or more that the railroad company must not move them without the permission of the Corporation Commission. The three Judge Court held that this act of the Legislature was an unconstitutional interference with interstate commerce, and granted the interlocutory injunction. The history of the case is contained in the affidavit filed by the members of the Corporation Commission (R., p. 44). The proceeding before the Corporation Commission was commenced in February, 1917, at which time Messrs. Lawrence and Taylor filed application in the Commission seeking an order preventing the Railway Company from moving its shops and division point from Sapulpa to West Tulsa. Pending the hearing of the case the Commission entered a temporary order prohibiting the Railway Company from making the move until a hearing could be had. The petition was filed in the Commission before the passage of the Act of 1917. Messrs. Lawrence and Taylor offered their testimony in that case, but before the Railway Company's testimony was offered the Act of 1917

was passed, and thereafter no further proceedings were had of any kind, and the temporary order remained in force. In December, 1926, the citizens of Sapulpa, acting through Messrs. Lawrence and Taylor, filed a motion in the case pending before the Commission, setting out that, notwithstanding the previous temporary order, and notwithstanding the Act of the Legislature, the Railway Company was proceeding to move its shops and division point from Sapulpa to West Tulsa without securing the permission of the Commission, or making any application as required by the 1917 Act. Thereupon, the Commission issued a second temporary order prohibiting the removal and setting the cause for hearing in January of this year. The Railway Company thereupon, without appearing before the Commission or asking its permission in any way, brought this action and secured the interlocutory injunction.

The case was presented in the lower court on affidavits.

UNDISPUTED FACTS.

The undisputed facts disclosed by the affidavits of the appellants are as follows: The line of the Railway Company was originally built to and terminated at the Village of Sapulpa in the Indian Territory, about 1890. It crossed the Arkansas River and ran through the Arkansas valley bottom so as to reach the high ground at Sapulpa and

provide a shipping point for the cattle ranging in the Indian Territory south and west of the river. From that day to this Sapulpa has been a division point and the location of shops. In 1898 the line was extended from Sapulpa in a westerly direction to Oklahoma City. In 1901 the line was extended from Sapulpa in a southerly direction to the Red River. A little later a line was built from the west bank of the Arkansas River, at what is now West Tulsa, toward the northwest. West Tulsa is fourteen miles east of Sapulpa. It has been the practice of railroads to locate division points approximately one hundred miles apart. On the lines of this Railway Company Sapulpa has always been a division point; Oklahoma City, one hundred and two miles west, has always been a division point; Francis, one hundred and one miles south, has always been a division point, and Afton, eighty-nine miles east, has been a division point. Sapulpa has grown from a mere village to a town of approximately fifteen thousand people during these years, and its growth has been intimately connected with the business of the Railway Company. At this time the Railway Company has about seven hundred employees living in Sapulpa, about half of whom own their homes, many of whom have been employed by the Railway Company for many years, and approximately three thousand to thirty-five hundred of Sapulpa's people are these railway employees and members of their families. The contracts between the Rail-

way Company and the four Brotherhoods of Railway Employees are based on runs of one hundred miles. When the Railway Company extended its line south, Sapulpa vacated certain streets for its use, and the citizens secured seven miles of additional right-of-way with the understanding that the shops and division point should remain at Sapulpa. At various other times Sapulpa has vacated streets for the use of the Railway Company, each time with the understanding that the shops and division point should be retained. Sapulpa has at various times collaborated with the engineers of the Railway Company in building a suitable water supply system in order to provide suitable boiler water for the Railway Company's use, and has expended considerable sums of money at the instance of the Railway Company for this purpose, always with the understanding that the shops and division point should remain. The officials of the Railway Company have advised their employees to buy homes in Sapulpa and become active citizens of the community, always representing to them that the location of the shops and division point was permanent. The employees have acted on this advise and have taken an active part in the municipal government of the city, many of them at various times holding public office in the city, and there has always been a friendly co-operation between the inhabitants of the city, the railway employees and the Railway Company. Sapulpa is a healthy city, well supplied with

modern conveniences, and the Railway employees desire to remain there. West Tulsa is on the west bank of the Arkansas River, located on bottom lands subject to overflow. The Arkansas bottom lands extend from the river in a westerly direction for a mile or two to a range of hills, and flood waters remain stagnant on these bottom lands and make West Tulsa an unhealthy place and an undesirable place for the employees and their families to live in.

CONTROVERTED FACTS.

The affidavits of the Railway Company and of the appellants raise an issue as to whether, from a physical operating standpoint West Tulsa or Sapulpa is the most desirable location for a division point, the affidavits of the Railway Company being in favor of West Tulsa and those of the appellants in favor of Sapulpa. The affidavits of the Railway Company show that the business of the company can be conducted more economically by locating the shops and division point at West Tulsa, while the affidavits of appellants show that this economy is in favor of Sapulpa. The affidavits of the appellants emphasize the fact that on business originating south of Sapulpa and destined to the lines west of Sapulpa, and on business originating west of Sapulpa and destined to the lines south of Sapulpa, there is now a direct movement through Sapulpa, while if the division is moved to West Tulsa there would be a back haul on all such traffic—that

is to say, it would have to move into West Tulsa, a distance of fourteen miles, and back a distance of fourteen miles, involving a double haul of twenty-eight miles. The affidavits of the Railway Company do not controvert this fact, which is obvious.

THE STATUTE INVOLVED.

The Act of the Legislature of 1917, the validity of which is involved in this case, is contained in Sections 3482 to 3485, inclusive, of the Compiled Oklahoma Statutes 1921, and reads as follows:

> "3482. REMOVAL—PERMIT. That no person, receiver, firm, company or corporation owning, operating or managing any line of steam railroad in this State shall be allowed to remove railroad shops or division points which have been located at any place in this State for a period of not less than five years without previously securing the permission of the Corporation Commission to make such removal.
>
> "3483. CORPORATION COMMISSION—JURISDICTION. If, and when any such person, receiver, firm, company or corporation desires to remove any such railroad shops or division point described in Section One of this act, it shall be his duty to file an application with the Corporation Commission setting forth the present location of such shops or division point and the reasons for such removal, and thereupon the Corporation Commission shall have full power and jurisdiction to entertain such complaint, but before hearing the same or making any order permitting such removal to be made, said cause shall be set down for hearing, not less than ten days' notice shall be given the city, town or village in which or at which such shops or division point have been maintained and after giving all par-

ties interested a full and complete hearing in the premises the Commission may in its discretion permit or refuse such request for a removal.

"3484. HEARING—BEFORE CORPORATION COMMISSION. When an application is filed before the Commission for the removal of terminals or car shops, as provided in Section Two, the Commission shall hear evidence on the relative efficiency and expense of handling traffic through the proposed terminal as compared with the present facilities, and shall consider all other facts and circumstances affecting the various interests involved. In determining the adequacy of the present facilities the Commission shall consider the same increased by an expenditure equal to an amount necessary to remove the same to the proposed location or an amount equal to the necessary expenditure to establish such facilities at the new location. It is hereby further provided that the Commission shall hear evidence and shall make a finding of fact as to the sanitary and habitable conditions of the proposed location with reference to whether the same would endanger the health of the employees of the applicant or the health of their families. If the Commission should find that the sanitary or habitable conditions at the proposed location of said terminal facilities would endanger or injuriously affect the health of the employees of said applicant or their families, the Commission should deny said application and order the said terminal facilities and car shops to remain at the present location.

"3485. PROOF—BURDEN UPON APPLICANT. On any such hearing, as provided in this act, the presumption shall be against the removal, and the burden of proof rest upon the applicant to show that such removal ought to be made."

In the bill of complaint the Railway Company also quotes Section 5548 of the Compiled Statutes 1921,

but this section is not a part of the 1917 Act, was passed ten years earlier, and is not involved in this cause.

ASSIGNMENT OF ERRORS.

The errors assigned are:

1. The Court erred in granting the interlocutory injunction against the defendants in said cause.

2. The Court erred in holding that the Act of the Legislature of 1917, pleaded in the bill of complaint in said cause, is in violation of the Constitution of the United States, and void.

ARGUMENT.

First.

The Act of the Legislature is primarily designed to protect the health of railroad employees and their families.

Section 3482 provides that railroad shops and division points which have been located for as much as five years shall not be moved without the permission of Corporation Commission.

Section 3483 outlines the procedure before the Corporation Commission on applications for removal.

Section 3484 provides that when such an application is filed:

> "• • • The Commission shall hear evidence on the relative efficiency and expense of handling traffic through the proposed terminal as compared with the present facilities, and shall consider all other facts

and circumstances affecting the various interests involved * * *."

It further provides:

"* * * That the Commission shall hear evidence and make a finding of fact as to the sanitary and habitable conditions of the proposed location with reference to whether the same would endanger the health of the employees of the applicant or the health of their families * * *."

And the Commission shall deny the application if the removal "* * * would endanger or injuriously affect the health of the employees of said applicant or their families."

Section 3485 imposes the burden of proof on the railway company.

It is obvious that this statute is an exercise of the power of the State to protect the health of railroad employees and their families by preventing railroads from moving terminals which have been located for a long time into a new location which is unhealthy and which endangers the health and safety of railroad employees and their families. The act has no relation to the location of new division points or new shops. It only applies to those which have been voluntarily selected by the railway company, and which have been used for as much as five years. It does not prevent a change of location even under such conditions. It merely prevents a removal to an unhealthy

location. It does not affect the movement of interstate commerce or of intrastate commerce, except as this may be incidentally affected by preserving the health and safety of the employees. Assuming that the new location is a healthy one, it is obvious that it is the duty of the Corporation Commission to permit the move if "the relative efficiency and expenses of handling traffic through the proposed terminal" is an improvement.

A division point is merely a place where train crews change. There is nothing in this act affecting the use of division points. There is nothing which prevents through trains from moving through division points in any manner desired by the railway company. There is nothing in the act which requires a change of crews at any particular division point. In fact, the affidavits in this case show that the Frisco through passenger trains move through Sapulpa without changing crews. The division points have a more direct relation to the movement of freight and the long established custom of railroads has been to locate division points approximately one hundred miles apart, and contracts with the Brotherhoods are based on runs of one hundred miles. If it be desirable, as claimed by the railway company, to make longer divisions there is nothing in this act to prevent it. The only thing that this act prevents is the forced movement of railroad employees and their families into an unhealthy location, and the undisputed testimony disclosed by affidavits in this case is that

West Tulsa is an unhealthy location on account of its being in the Arkansas River valley bottom on land subject to overflow and where stagnant water stands for a long time.

Second.

A State may legislate to protect the health of railroad employees.

Legislation under the police power need not apply directly to every inhabitant of a state, but may apply only to those who come within the class affected. The power of governments, both national and state, to legislate in the interests of railroay employees has been too often exercised to admit of debate.

In *Napier* v. *Atlantic Coast Line Railway Company,* decided November 29, 1926, not yet officially reported (47 Supreme Court Reporter 207), the court at this term has specifically announced the rule here laid down. The question involved in that case was whether the Federal Locomotive Boiler Inspection Act had superseded a Georgia statute prescribing an automatic door to the firebox of engines, and a Wisconsin statute prescribing cab curtains for the use of engines. Prior to the enactment of the Federal Act similar state statutes have been held valid, but the court held in this case that the Federal Act had occupied the field and rendered state statutes on the same subject invalid. The opinion, however, lays down the rule defin-

itely for which we now contend, the court saying, at page 209 of the Supreme Court Reporter:

> "Each device was prescribed by the state primarily to promote the health and comfort of engineers and firemen. Each state requirement may be assumed to be a proper exercise of its police power, unless the measure violates the commerce clause."

And, again, on the same page the court says:

> "The requirements here in question are, in their nature, within the scope of the authority delegated to the Commission. An automatic fire door and an effective cab curtain may promote safety. Keeping firemen and engineers in good health, like preventing excessive fatigue through limiting the hours of service, clearly does so, although indirectly, and it may be found that to promote their comfort would likewise promote safety."

The state statutes involved in that case were held invalid, not because the state did not have the power to enact them. The power to enact them was clearly conceded. They were held invalid merely because the Federal Act had occupied the field, but the Court specifically recognized and asserted the doctrine that the state has power to legislate to promote the health and comfort of engineers and firemen—that is to say, a portion of the railroad employees.

Clearly, therefore, the state has power to legislate in the interest of the health of railroad employees and their families, and this act is valid exercise of the state's police power unless it comes into direct conflict with some act of Congress or with the Constitution.

Third.

There is no Act of Congress relating to the subject covered by this Act.

We state this point without argument. It is the mere statement of a negative. There is nothing in the Transportation Act or in any other act of Congress relating to the subject. There was no contention made in the lower court that there was any such Congressional legislation, and we assume that no such contention will be made here.

In *Railroad Commission of California* v. *Southern Pacific Company,* 264 U. S. 321 (The Los Angeles Union Station case), this Court recognized a much broader power as still left to State Commissioners when it said, page 345:

> "One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state."

In this quotation the court recognizes the existence, notwithstanding the Transportation Act, of the power of state commissions to direct the construction of "merely local union stations or terminals."

If this power is left in the state commissions there is certainly nothing in the Transportation Act which can in any way affect the act of the legislature now involved, as it requires nothing in the way of construction but merely

prevents the removal of division points and shops to an unhealthy location.

Fourth.

The Act here involved does not conflict with the commerce clause of the Constitution.

International & Great Northern Railway Company vs. Anderson County, 246 U. S. 424.

That case involved a number of points not material here. It did involve, however, the validity under the commerce clause of the Office-Shops Act of the Texas Legislature, and it held that that act was valid. We think that case is conclusive of the validity of this act. The act of the Texas Legislature involved in that case is described in the opinion of the court, at page 430, as follows:

> "Act, approved March 27, 1889, c. 106; Rev. Civil Stats. 1911, Sec. 6423, provided that every railroad company chartered by the State or owning or operating a line within the State should permanently maintain its general offices at the place named in its charter, and if no certain place were named there, at such place as it should have contracted to locate them, otherwise at such place as it should designate; also that it should maintain its machine shops and roundhouses at the place where it had contracted to keep them, and that if the offices, shops or roundhouses were located on the line of a railroad in a county that had aided such railroad by an issue of bonds in consideration of the location being made, then such location should not be changed; 'and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization.' A violation of the act entails

forfeiture of the charter, with a penalty of $5,000 a day for every day of violation."

We call attention to the fact that the Texas Act prohibited removal of general offices, machine shops and roundhouses. The Texas Act had no relation to the health of railroad employees, but was a prohibition against removal. The Oklahoma Act does not prohibit the removal of shops and division points, but provides a method for removal. The only circumstances under which a removal is prevented are when the health and safety of the railroad employees and their families are involved. If the Texas Act was valid, it therefore follows that there is no doubt about the validity of the Oklahoma Act, because if a state can prohibit the removal of shops without regard to the health of the employees, then it can certainly prevent the removal of shops to a place where the health of the employees and their families is threatened.

Again, in the Texas Act there was no provision for an inquiry by the commission. There was a mere prohibition against the removal, while in the Oklahoma Act the removal is permitted after an inquiry and upon a finding that the health of the employees is not endangered.

The Texas Act was attacked as a burden on interstate commerce, and this Court, in passing on that question, says (p. 433):

"The acceptance of the charter by the plaintiff in error disposed of every constitutional objection but

one. It is said that the restriction imposes a burden upon commerce among the States, since the road concerned has expanded and now is largely engaged in such commerce. The jury found that it imposed no such burden, upon an issue submitted to them in accordance with the desire of the plaintiff in error, although not in the form that it desired. So far as the question depended upon the testimony adduced the verdict must be accepted, and although no doubt there might be cases in which this Court would pronounce for itself, irrespective of testimony, whether a burden was imposed, we are not prepared to say that in this instance the State has transcended its powers."

We think this decision settles our case. We thought so when it was presented to the three judge court below, but that court for some reason did not see fit to follow the rule laid down by this Court. Any further debate on the point would seem to be entirely superfluous, but as we lost the case in the lower court by relying upon the decision of this Court, we have concluded to briefly call attention to some of the numerous decisions of this Court, upholding other state legislation much more nearly trenching upon a regulation of commerce, and this brings us to the next point.

Fifth.

Laws passed by a State in the exercise of its police powers are valid, even though they indirectly affect interstate commerce.

The principles involved are clear, and the only difficulty is in their application. The states within their proper sphere are sovereign. The United States within

their proper sphere are sovereign. Congress has the power to regulate interstate commerce. It was originally thought that until Congress acted, the state might act even in the regulation of interstate commerce. License cases, 5 Howard 504. But this doctrine was subsequently overruled in *Leisy* v. *Hardin,* 135 U. S. 100. Although in that case there was a very able dissenting opinion by Justices Gray, Harlan and Brewer, it may now be taken as a settled rule that state legislation must not regulate interstate commerce. On the other hand, the states never surrendered their police power to the United States. Their power to protect and preserve the health, the morals, the welfare and the safety of their people has never been surrendered. They may in the exercise of this power and in the absence of Congressional legislation absolutely prohibit interstate commerce. For example, the States may prohibit the importation of diseased cattle. *M., K. & T. R. R. Co.* v. *Haber,* 169 U. S. 613. They may prohibit the running of freight trains on Sunday. *Hennington* v. *Georgia,* 163 U. S. 299. Similar legislation has been sustained in a number of the cases hereafter cited. The real question for consideration in every case is whether the legislation of the state is reasonably related to its declared object. If it is, or if the question is fairly debatable, the act is valid. For example, this Court at this term in *Village of Euclid* v. *Ambler Realty Company,* decided November 22, 1926 (47 Supreme Court Reporter 114), says, page 118:

"If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control."

Again, at page 121, the court says:

"If these reasons, thus summarized, do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."

Again, at this term the court said in *Graves* v. *Minnesota,* decided November 22, 1926, 47 Supreme Court Reporter 122:

"By enacting the present statute the State has determined, through its legislative body, that to safeguard properly the public health it is necessary that no one be licensed to practice dentistry who does not hold a diploma from a dental college of good standing. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute."

Again, at this term in *Mass. State Grange* v. *Benton,* decided November 23, 1926, 47 Supreme Court Reporter 189, the court, in upholding the daylight saving act, said:

"But it also went on the important rule, which we desire to emphasize, that no injunction ought to issue against officers of a State clothed with authority to enforce the law in question, unless in a case reasonably free from doubt and when necessary to prevent great and irreparable injury."

We do not think there is any doubt about the Oklahoma Statute being passed to protect the health and safety of railroad employees, and not as a regulation of commerce of any kind. It certainly cannot be said that it is clear that this is not so. It, therefore, follows under the rules laid down by this Court at this term that this injunction should not issue. The shops and division point in this case have been located at Sapulpa since the railroad was constructed, and to leave them there long enough for the railway company to apply to the commission for an order certainly would not have imposed on the railway company "great and irreparable injury." Having been there thirty-five years they might easily remain there three or four months longer without materially injuring the railway company.

Bearing in mind these rules resolving the doubt in favor of the statute, we call attention briefly to a number of cases in which state legislation has been sustained against an attack under the commerce clause.

In *The Mayor of New York* v. *Miln*, 11 Peters 102, in sustaining a statute of New York requiring a master of a vessel arriving from a foreign port to report to the Mayor an account of his passengers, the Court, in discussing the commerce clause, says (p. 139):

> "There is, then, no collision between the law in question and the acts of congress just commented on; and, therefore, if the state law were to be considered

as partaking of the nature of a commercial regulation, it would stand the test of the most rigid scrutiny, if tried by the standard laid down in the reasoning of the court, quoted from the case of Gibbons vs. Ogden.

"But we do not place our opinion on this ground. We choose rather to plant ourselves on what we consider impregnable positions. They are these: That a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a State to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation, which it may deem to be conducive to these ends, where the power over the particular subject, or the manner of its exercise, is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified, and exclusive.

"We are aware that it is at all times difficult to define any subject with proper precision and accuracy; if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one which we are now considering.

"If we were to attempt it, we should say that every law came within this description which concerned the welfare of the whole people of a State, or any individual within it; whether it related to their rights, or their duties; whether it respected them as men, or as citizens of the State; whether in their public

> or private relations; whether it related to the rights of persons, or of property, of the whole people of a State, or of any individual within it; and whose operation was within the territorial limits of the State, and upon the persons and things within its jurisdiction."

The Act of the Oklahoma Legislature certainly concerns the welfare of a portion of its inhabitants, that is to say, railroad employees, as it is designed to protect them from living in an unsanitary place, and in this particular case three or four thousand people are involved. The rule laid down in the above quotation with reference to the police power does not limit it to the whole people of a State, but likewise to "any individual within it." The State certainly has the right to legislate for the health of railway employes, and this specific point has been decided in a number of cases cited herein.

In *Smith* v. *Alabama,* 124 U. S. 465, the court sustained an Alabama statute requiring locomotive engineers to be examined and licensed by a Board appointed by the State.

In *Nashville, Chattanooga & St. Louis Ry.* v. *Alabama,* 128 U. S. 96, the court sustained a statute requiring locomotive engineers to pass an examination showing their ability to discriminate between colors, and requiring the railway companies to pay a fee for the examination.

In *Plumley* v. *Massachusetts*, 155 U. S. 461, a statute was sustained prohibiting the sale of oleomargarine artificially colored.

In *Western Union Telegraph Co.* v. *James*, 162 U. S. 650, a Georgia statute was sustained penalizing telegraph companies for negligent delay in delivering messages.

In *Hennington* v. *Georgia*, 163 U. S. 299, a statute was sustained prohibiting the running of freight trains on Sunday.

In *New York, New Haven & Hartford R. R. Co.* v. *New York*, 165 U. S. 628. a statute was sustained regulating the heating of steam passenger cars, although the argument was made that different States might prescribe different regulations, thereby stopping a train running through two or more States in order that the railroad might comply with conflicting regulations.

In *Chicago, Milwaukee & St. Paul R. R. Co.* v. *Solan*, 169 U. S. 133, an Iowa statute was sustained which provided that no contract shall exempt any railroad from the liability of a common carrier, even as applied to interstate commerce.

In *Missouri, Kansas & Texas Ry. Co.* v. *Haber*, 169 U. S. 613, a Kansas act was sustained prohibiting shipment into Kansas of diseased animals.

In *Patapsco Guano Co.* v. *North Carolina Board of Agriculture,* 171 U. S. 345, an act was sustained which provided for the inspection of fertilizer moving into the State in interstate commerce, and imposing an inspection fee.

In *Lakeshore & Michigan Southern Ry. Co.* v. *Ohio,* 173 U. S. 285, a statute was sustained requiring railroad companies to stop at least three of their trains at every town containing three thousand inhabitants.

In *Erb* v. *Morasch,* 177 U. S. 584, a city ordinance was sustained limiting the speed of interstate trains within the city limits.

In *Reid* v. *Colorado,* 187 U. S. 137, a statute was sustained prohibiting the introduction of diseased cattle or horses.

In *Crossman* v. *Lurman,* 192 U. S. 189, a New York statute was sustained prohibiting the sale of adulterated food and drugs, although moving in interstate commerce.

In *New Mexico* v. *Denver & Rio Grande R. R. Co.,* 203 U. S. 38, a territorial statute was sustained prohibiting a railroad company receiving for shipment beyond the limits of the territory, hides which had not been inspected.

In *Asbell* v. *Kansas,* 209 U. S. 251, a statute was sustained which prohibited the transportation of cattle into

the state from the south, except for immediate slaughter, which had not been passed as healthy by the proper state officials or by the National Bureau of Animal Industry.

In *Atlantic Coast Line Railroad Co.* v. *Mazursky*, 216 U. S. 122, a South Carolina statute was sustained requiring railroads within a specified time to settle claims for loss or damage to freight, even as applied to interstate shipments.

In *Western Union Telegraph Co.* v. *Commercial Milling Co.*, 218 U. S. 406, a Michigan statute was sustained fixing the liability of telegraph companies for non-delivery of interstate as well as intrastate messages.

In *Chicago, Rock Island & Pacific Ry. Co.* v. *Arkansas*, 219 U. S. 453, the full crew law was sustained as applied to interstate trains.

In *Western Union Telegraph Co.* v. *Crovo*, 220 U. S. 364, a Virginia statute was sustained imposing a penalty on telegraph companies for failure to perform a common law duty, even as applied to interstate messages.

In *Red "C" Oil Co.* v. *North Carolina*, 222 U. S. 380, an oil inspection statute was sustained as applied to interstate shipments.

In *Savage* v. *Jones*, 225 U. S. 501, an Indiana statute was sustained regulating the sale of concentrated commercial feeding stuff, as applied to interstate commerce, al-

though the Federal Food and Drugs Act was then in effect.

In *Grand Trunk Ry. Co.* v. *Michigan Railroad Commission,* 231 U. S. 457, an order of the Commission was sustained requiring certain railroads doing an interstate business to use their tracks within the city limits of Detroit for the interchange of intrastate traffic.

In *Atlantic Coast Line Railroad Company* v. *Georgia,* 234 U. S. 280, a statute was sustained requiring railroads to use locomotive headlights of specified form and power, although it was argued that different requirements might be passed by different states, thus requiring railroad locomotives to have different headlights on two sides of the imaginary state line.

In *Sligh* v. *Kirkwood,* 237 U. S. 52, a Florida statute was sustained prohibiting shipment of immature citrus fruits.

In *Armour & Co.* v. *North Dakota,* 240 U. S. 510, a statute was sustained requiring lard to be put up in pails containing a specified number of pounds, even as applied to shipments from other states.

In *Pure Oil Co.* v. *Minnesota,* 248 U. S. 158, a statute was sustained providing for the inspection of the illuminating oils and gasoline while yet in interstate transit, and imposing an inspection fee.

In *Merchants Exchange of St. Louis* v. *Missouri,* 248 U. S. 365, a statute was sustained which prohibited any person other than a duly authorized and bonded State Weigher, from issuing weight certificates for grain weighed at any warehouse or elevator where State Weighers were stationed, even as applied to interstate shipments.

In *Corn Products Refining Co.* v. *Eddy,* 249 U. S. 427, a regulation by the State Board of Health was sustained requiring proprietary foods imported into the State and sold in original packages to bear labels stating the names and percentages of the ingredients.

In *South Covington & Cincinnati Street Ry. Co.* v. *Kentucky,* 252 U. S. 399, a separate coach law for white and colored passengers was sustained.

In *Western Atlantic R. R.* v. *Georgia Public Service Commission,* 267 U. S. 493, a rule was sustained providing that switching service shall not be discontinued without the consent of the Commission, even as applied to interstate commerce.

Sixth.

This action was prematurely brought.

We repeat what has been said before. This division point has been located at Sapulpa ever since the railroad has been built. It was located voluntarily. In 1917, before the act of the legislature was passed, a proceeding

was instituted before the corporation commission to prevent the removal of the terminal to West Tulsa, because amongst other things it was an unhealthy place for the employees to live. A temporary order was obtained. The evidence of the plaintiffs in that case was introduced. Then came the act of the legislature. After that nothing further was done in that case, but the temporary order was left in force without any effort by the railroad company to have it set aside. The situation remained thus for ten years. Then the railway company, ignoring the order of the commission and ignoring the act of the legislature, started to move its division point and shops. The matter was brought to the attention of the commission and set down for hearing in January of this year. The railway company, instead of appearing at that time, filing an application and showing cause why it should be allowed to move, hurried into the federal court, got a temporary restraining order without notice and after a hearing obtained the interlocutory injunction. The orderly procedure would have been for the railway company to comply with the law of the State, to respect the order which had been made by the commission, and which had been in force uncontested for ten years. It might have obtained the relief which it desired. The commission, in its affidavit, states that it intends, if permitted, to give the case suitable consideration and to make such an order as right and justice may require. Having volun-

tarily located its shops and terminals at Sapulpa, having maintained them there since there has been a railroad, approximately thirty-five years, having complied with the temporary order of the commission without protest for ten years, the railway company would not have been damaged by pursuing the orderly course provided by the statute. Its cry of pain is emitted in advance of an injury.

The principle applicable is announced in *Prentis* v. *Atlantic Coast Line,* 211 U. S. 210, where the court held that the railroads should have exhausted their remedy in the state courts before seeking an injunction in the federal court.

Western Atlantic Railway Company v. *Public Service Commission of Georgia,* 267 U. S. 493, is even more directly applicable to this case. In that case the railway company filed its bill in the district court against the public service commission to enjoin the enforcement of an order requiring the railroad to furnish switching services on an industrial siding. A three judge court denied the application for a temporary injunction, and an appeal was taken to this Court. In that state there was a general order by the commission providing that facilities enjoyed by shippers under the law or rules of the commission, whether granted by voluntary action on behalf of the railway company or otherwise, should not

be discontinued without the consent of the commission. This court says, page 496:

> "The three-judge court refused the application, on the ground that Rule 14 had not been complied with. Rule 14 is a reasonable rule and the Commission was fully justified in refusing to sanction a discontinuance of service until a petition had been filed with the Commission and a showing made. The doubt which arises in our minds is whether the Public Service Commission, by its consent to a full hearing of the issue without a formal petition and an order based on the merits, did not waive the defect of a petition. *The action of the Company in discontinuing the service without a petition was arbitrary and defiant,* but the subsequent action of the Commission seems to have condoned the fault in such a way as to prevent our making it a reason for not looking farther into the issues now raised by the Company in its bill.
>
> "It is said that the requirement of the continuance of the service deprived the Company of its property without due process of law, in violation of the Fourteenth Amendment, because the service rendered by the sidetrack was much greater in out of pocket cost than the compensation. This can not be sustained. The service has been rendered for years. It was a voluntary arrangement, and under its statutory powers (Sec. 2664, Georgia Code, 1910) was made irrevocable by the Public Service Commission under Rule 14, except by consent of the Commission. The spur track was for a public purpose. *Union Line Co.* v. *C. & N. W. Ry. C.*, 233 U. S. 211. *The requirement that such a service should not be discontinued, without notice and hearing was clearly within the police power of the State. Chicago & Northwestern R. R. Co.* v. *Ochs*, 249 U. S. 416; *Lake Erie & Western R. R. Co.* v. *Cameron*, 249 U. S. 422; *Railroad Commission* v. *L. & N. R. R. Co.*, 148 Ga.

442. Even if the cost of the switching is more than what is received for it, we can not determine on any showing made by the Company that the switching does not work a benefit in the increased business that the Company gets, or may get, by reason of the added facilities furnished by the switching. The switch is a small part of the whole railway, and the mere fact that the switching may not be profitable by itself can not be held to be a confiscation of property, even if it involves a loss. See, *Fort Smith Light & Traction Company* v. *Bourland,* 267 U. S. 330.

"It seems to be the contention of the Company that, since 85 per cent of the business done on the side track is interstate commerce, the power to order its establishment or abandonment is vested in the Interstate Commerce Commission, and that the state commission is without authority in the premises. Such a claim is in the teeth of the Transportation Act of 1920, 41 Stat. 456, c. 91 Sec. 402, par. 22, which provides that the authority of the commission conferred by Sec. 402 over the extension or abandonment of interstate railway lines shall not extend to the construction of spur industrial or side tracks. See, *Railroad Commission* v. *Southern Pacific Co.,* 264 U. S. 331, 345."

The act of the Oklahoma Legislature is comparable to Rule 14 of the Georgia Commission, and the three-judge court should have refused the temporary injunction just as it was refused in the Georgia case, for the reason that the railroad had not availed itself of the method prescribed by the State. This Court recognizes that that was a proper rule, and, particularly, as it was a voluntary arrangement that had been in force for years, the commission had the power by the rule to prevent its discontinuance without a hearing. That is our case almost exactly.

This case was also called to the attention of the three judges in the court below, but apparently it had no more weight with them than the decision of this Court in the International and Great Northern case.

We have, therefore, in this case a temporary injunction granted by three judges, although there are two decisions of this Court directly in point; the International & Great Northern case, holding that the Texas statute was valid, and the Western & Atlantic case, holding that Rule 14 of the Georgia Commission was valid and must be complied with before relief could be sought in the federal court.

Seventh.

Imposing the burden of proof on the railway company is a valid provision.

The argument was made in the lower court that this provision renders the act invalid. On this point we content ourselves with citing *James-Dickinson Farm Mortgage Company et al.* v. *Carrie M. Harry,* decided by this Court January 10, 1927, not yet officially reported.

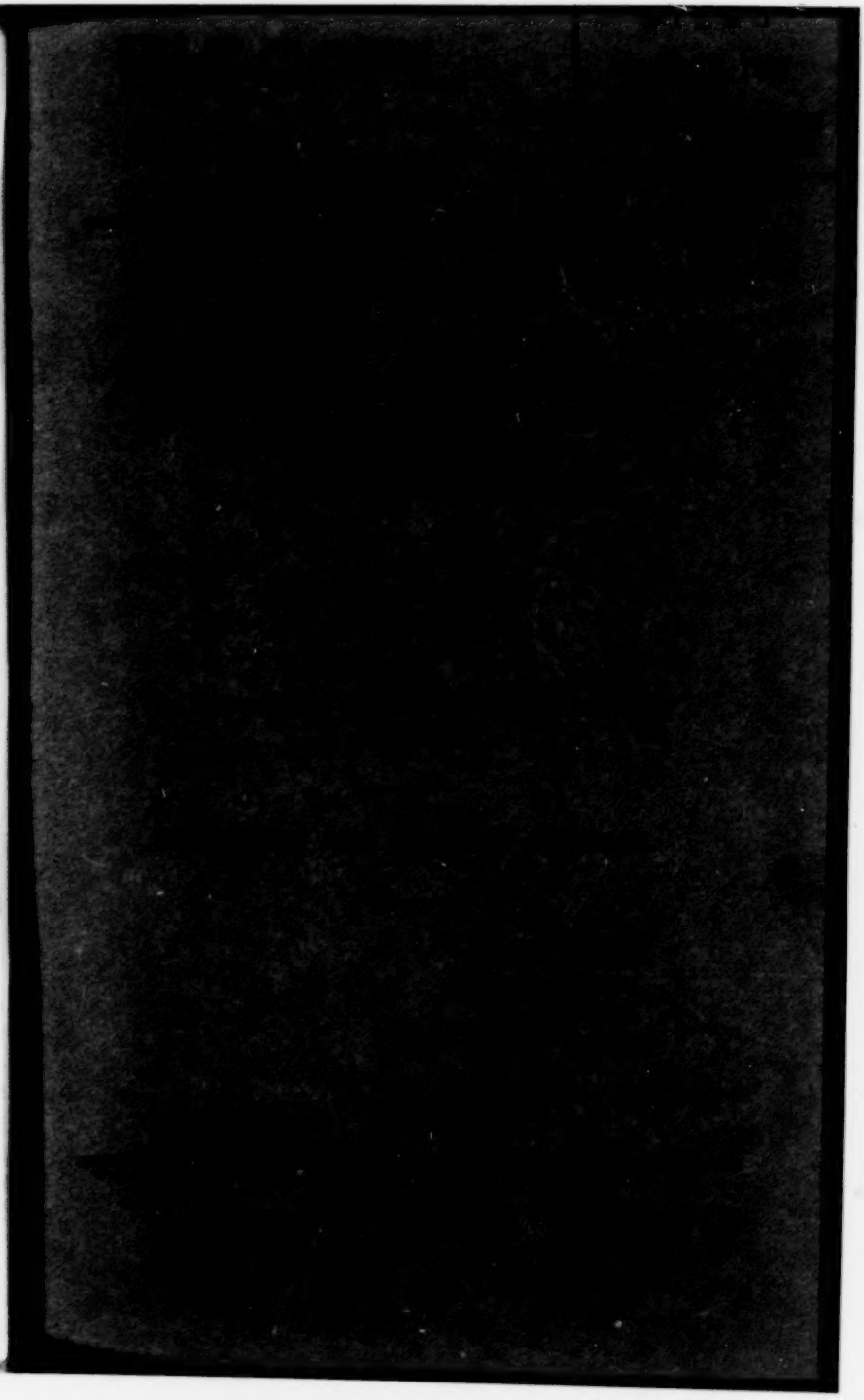
We respectfully submit that the decree of the lower court should be reversed.

EDWIN DABNEY,
Attorney General of Oklahoma,

HOUSTON B. TEEHEE,
Assistant Attorney General,

T. L. BLAKEMORE,
C. B. AMES,
Attorneys for Appellants.

AMES, LOWE & COCHRAN,
of Counsel.



INDEX

TABLE OF CASES CITED

NO. 894

In the Supreme Court of the United States

OCTOBER TERM, 1926.

J. F. LAWRENCE ET AL.,
Appellants,

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
Appellee.

STATEMENT AND BRIEF OF APPELLEE.

We do not think appellants' statement, as contained in counsel's brief is quite sufficient to clearly cover the history and facts of this case as contained in the record. We are therefore, briefly outlining the facts developed by the record, which we think are pertinent to a consideration of the questions involved herein.

The Act of the Legislature in Controversy.

The sections of the Oklahoma Statutes upon which appellants base the authority and jurisdiction of the Cor-

poration Commission to take the action enjoined by the lower court, are Sections 3482, 3483, 3484 and 3485 of the Compiled Oklahoma Statutes, 1921, and were passed by the 1917 session of the Oklahoma Legislature, said sections read as follows:

"3482. That no person, receiver, firm, company or corporation owning, operating or managing any line of steam railroad in this State shall be allowed to remove railroad shops or division points which have been located at any place in this State for a period of not less than five years without previously securing the permission of the Corporation Commission to make such removal.

"3483. If, and when any such person, receiver, firm, company or corporation desires to remove any such railroad shops or division point described in Section One of this Act, it shall be his duty to file an application with the Corporation Commission setting forth the present location of such shops or division point and the reasons for such removal, and thereupon the Corporation Commission shall have full power and jurisdiction to entertain such complaint, but before hearing the same or making any order permitting such removal to be made, said cause shall be set down for hearing, not less than ten days' notice shall be given the city, town or village in which or at which such shops or division point have been maintained and after giving all parties interested a full and complete hearing in the premises the Commission may in its discretion permit or refuse such request for a removal.

"3484. When an application is filed before the Commission for the removal of terminals or car shops, as provided in Section Two, the Commission

shall hear evidence on the relative efficiency and expense of handling traffic through the proposed terminal as compared with the present facilities, and shall consider all other facts and circumstances affecting the various interests involved. In determining the adequacy of the present facilities the Commission shall consider the same increased by an expenditure equal to an amount necessary to remove the same to the proposed location or an amount equal to the necessary expenditure to establish such facilities at the new location. It is hereby further provided that the Commission shall hear evidence and shall make a finding of fact as to the sanitary and habitable conditions of the proposed location with reference to whether the same would endanger the health of the employes of the applicant or the health of their families. If the Commission should find that the sanitary or habitable conditions at the proposed location of said terminal facilities would endanger or injuriously affect the health of the employes of said applicant or their families, the Commission shall deny said application and order the said terminal facilities and car shops to remain at the present location.

"3485. On any such hearing, as provided in this act, the presumption shall be against the removal and the burden of proof rest upon the applicant to show that such removal ought to be made."

We desire to call the Court's attention to Section 5548 of Compiled Oklahoma Statutes, 1921, passed by the 1907-8 Legislature quoted in our complaint and shown at page 5 of the record compelling all transportation companies, which had established at the time of the passage of said Act, or which might thereafter

establish, round houses or machine shops, to maintain such shops and round houses with sufficient equipment and employes to repair all rolling stock, etc., used within the State. Counsel for appellants, however, say on page 9 of their brief that this Act is not involved in this cause and we, therefore, take it that they concede that if same has the effect of preventing the removal of the shops described in this case, that it is unconstitutional and void.

In this connection attention is called to the fact that this statute has effect of absolutely preventing the removal, at any time, of round houses and machine shops when same are once located. As this act was passed by the Legislature of 1907-8, it shows a willingness on the part of the Legislature of the State of Oklahoma to, by legislation, control the affairs of interstate railroads most intimately and necessarily connected with the management and business of such roads.

STATEMENT OF FACTS.

History of Case.

During the month of February, 1917, appellants, J. F. Lawrence and C. C. Taylor, appearing on behalf of themselves and the Chamber of Commerce of the City of Sapulpa and the citizens of the City of Sapulpa, insti-

tuted a proceeding before the Corporation Commission of the State of Oklahoma for the purpose of preventing appellee from removing its division point and shops from the City of Sapulpa. In the complaint filed in said proceeding, said appellants allege that they had been selected by a mass meeting of the citizens of Sapulpa, held on the 3rd day of February, 1917, to file said complaint with the Corporation Commission on behalf of said citizens. Said complaint is set out in the record at pages 44 to 47 inclusive.

At the time of the filing of said complaint, no statute existed in the State of Oklahoma giving the Corporation Commission jurisdiction to prevent a railway company from removing and relocating, at places selected by it, any of its shops or division points. However, the Corporation Commission took jurisdiction of said matter and issued a temporary restraining order preventing such removal.

A partial hearing was had on this complaint and an adjournment taken. During the adjournment, the Legislature of the State of Oklahoma, which it seems was in session at the time the above proceeding was had before said Commission, passed the act in controversy in this case. Whether or not said act was passed for the purpose of particularly applying to the situation at

Sapulpa is not clearly developed by the record. However, the record does show that said act was passed during an adjournment of said case and the provisions of said act were made to peculiarly fit the contention of complainants in said proceeding.

After the passage of said act, no further action was taken in said proceeding before the Corporation Commission until on the 29th day of December, 1926, appellants, J. F. Lawrence and C. C. Taylor, procured another order from said Commission preventing said removal. This order was based upon the former order of said Commission and the Act of the Legislature above referred to. Our complaint was then filed before the United States District Court for the Northern District of Oklahoma against all of the above named appellants praying that they be enjoined from interfering with the removing of said shops and division point for the reason that the Act of the Legislature, under which they sought to act, was unconstitutional and void. After a hearing before a three-judge court, said court held said Act of the Legislature unconstitutional and void and the order complained of by appellants herein was made.

Definition and Use of Shops and Division Points.

It is developed by our complaint and the affidavits introduced at the trial, and is, we take it, conceded by appellants that division points are points established by railway companies dividing the runs of their crews and equipment. Through freight and passenger cars are dropped by certain trains and picked up by others at division points. If it is necessary for through freight or passenger cars to lay over or wait for any length of time enroute, this delay occurs and the necessary changes are made at division points. As crews begin and end their runs at division points, and as such runs must constitute a day's work for a crew, then the distances between these points must be governed by the number of hours the crews work daily, the speed of the trains operated, the character of equipment used and the servicable condition of the roadbed over which the trains are operated. As division superintendents and other division officers and employes are appointed for each division, then the number of officers and employes of the railway system are, to a great extent, controlled by the number of divisions created. Thus, it is seen that the location of division points within any one state on such road must co-ordinate with the location of division points on said road in other states throughout the

system. Therefore, it follows that the location of division points on a great interstate railway system, such as appellee, is necessarily a part of the management of the operation of said road, and where the business of such road is largely interstate commerce, the establishment of division points necessarily constitute an important factor in the operation, management and control of the interstate commerce business of such road.

It is equally developed and conceded that railroad shops are located for the purpose of keeping in repair the rolling stock, equipment, etc., used and operated by the railroad company, and as it is necessary for the company to operate its equipment between division points and make necessary changes and repairs of equipment at division points, then it follows that, in nearly every instance, it is necessary for the company's repair shops to be located at division points. When the road is extensively engaged in interstate commerce, the repair shops of such road located at division points are necessarily used for the repair of the company's equipment used in interstate commerce, and are therefore, as much a part of the interstate commerce of such road as are the engines, roadbed and other equipment of said road used in such commerce.

It is further developed, and we take it conceded,

that as the location of division points and repair shops constitute an important factor in the management of the affairs of the company, and as these questions are decided to best facilitate the commerce business of such company with regard to the entire business of said company, including the operation of its through passenger and freight service, then neither the traveling nor shipping public of any particular locality, as such, are in any manner interested in the location of such shops and division points. The location of repair shops or a division point at any particular town, or their removal from that town in no manner affects the shipping or passenger facilities furnished to the inhabitants of such town.

History and Character of Business of Railway Company.

About the year 1890, the St. Louis & San Francisco Railroad Company, the predecessor of appellee, built a line of railroad from St. Louis, Missouri, to Sapulpa, Indian Territory. At the time of this construction, there was little development in the Indian Territory so far as white population or white settlements were concerned. When the railroad halted at Sapulpa, it was necessary to provide something in the way of terminal facilities at that point and this was done in a meager way. In 1898, the line of railway was extended in a westerly di-

rection to Oklahoma City. In 1901, a line was built from Sapulpa in a southerly direction across Red River into Texas. After these lines had been built, the shops and other terminal facilities at Sapulpa were gradually increased until they have reached their present size.

In the early history of the railroad, both Tulsa and Sapulpa were small villages. However, beginning about 1905, Tulsa began to show signs of considerable development; especially, from a shipping standpoint. In the meantime, the northern and western portions of Oklahoma Territory had developed and the railroad constructed a line from Tulsa in a northwesterly direction extending through the towns of Pawnee, Perry, Enid, and from Enid in a northerly and southerly direction. The division point of this line was necessarily located at Tulsa. Around the City of Tulsa and along the railway company's line to the northwest, immense oil fields and oil properties developed. The City of Tulsa grew from a small village until at the present time, it is a city of approximately 125,000 people, and has become one of the great shipping centers, if not the greatest shipping center in the State of Oklahoma.

While, on the other hand, the City of Sapulpa never developed to any great extent, either as a commercial center or shipping point; and at the present time, is a

city of only about 15,000 people. The principal railroad business transacted at Sapulpa, has been peculiarly connected with railroad shops and division points and with which the real inhabitants of Sapulpa were not, in any manner, concerned. That is, the business of repairing rolling stock and equipment used by the railroad on its various lines and the business of handling and changing through freight and passenger trains.

It is undisputed that since appellee took over the properties of the old St. Louis & San Francisco Railroad Company, in 1916, it has become a great interstate railroad extensively engaged in interstate business. Undisputed affidavits submitted at the trial show that approximately 85% of the railway company's business passing through, originating and received at the stations at Tulsa and Sapulpa, is interstate in character. That the lines of said railroad extend through Oklahoma, Texas, Kansas, Arkansas, Missouri, Tennessee and other states. That the stations at Sapulpa and Tulsa are located on the main line of said railroad extending from St. Louis, Missouri, to Oklahoma City, Oklahoma, and from Kansas City, Missouri, to Dallas Texas.

Necessity for Change of Location.

The records show that at the time the lines of railway under consideration were built into the Indian Territory and the shops and the division points first located, the amount of business transacted was very small in proportion to its present business. That the roadbed at that time was inferior and not capable of sustaining the rolling stock used at the present time. That the engines were light and the motor power of such a character so that it was necessary to change engines and crews often. All of these conditions made it essential that shops and division points be located at a distance of about 100 miles apart. With the old equipment, the speed of the trains was such, that the daily hours of labor of the crews would enable them to travel a distance of about 100 miles. The record shows that since that time the size of the locomotives have been greatly increased. Many useful inventions have made the locomotives more servicable and efficient. The super-heaters, improvements in fire boxes, brick arches, hot water injectors and many other things have made it possible to run engines much further and for a greater length of time, than it was formerly possible. Many changes have been made in the construction of the lines, making it possible to operate efficiently the improved equipment. Heavier steel has been laid,

new bridges have been built, the tracks have been ballasted and put in better condition. These changes have wrought a great revolution in the business of this company. While, under the old system it was only possible to operate the crew and engine a distance of possibly 100 miles, it is now possible, and not unusual, that both freight and passenger trains are operated from four to six hundred miles, without a change of equipment, and crews of course travel much greater distance during their daily hours of work.

Owing to the great volume of interstate business originating at the station of Tulsa and owing to the fact that Tulsa was made the terminal and division point of the railroad extending northwesterly from Tulsa to Enid, it became absolutely necessary to the efficient operation of the railroad's business to establish shops, yards and other terminal facilities at Tulsa. As the business grew these terminal facilities have been increased and expanded, until, within the last few years the shops and division point at the station of Sapulpa have become a great unnecessary and needless expense.

Affidavits submitted at the trial and contained in the record in this case, show by the quotation of items and figures that at least $30,000.00 per month can be saved to the company by eliminating its shops and

division point at Sapulpa and exclusively using those now located at Tulsa, and that the expense of the change would be very meager. See affidavit of F. H. Shaffer, record, pages 37 to 40 inclusive.

This showing was not disputed by appellants' affidavits, except by the opinion of certain parties to the effect that they did not think that the change would effect a saving. The record also shows that owing to the natural conditions existing at Sapulpa, the interstate business of the railroad necessary to be transacted at the railroad shops and division point located in that vicinity, cannot be efficiently transacted at Sapulpa without, at least, the expenditure of an immense sum of money.

Reasons for This Action.

The record shows that owing to improved equipment, roadbed, etc., and owing to the increase of the volume of interstate business transacted, that the officers and managers of appellee, having to do with the management of its business after mature consideration and deliberation adopted a general scheme throughout its entire system, extending through many states, of eliminating certain shops and division points and placing those remaining at greater distances apart and increasing the

facilities and efficiency of same, also changing schedules and runs of interstate trains throughout its system in order to meet conditions thus revised, and to more efficiently handle its increased interstate business.

That in order to fit in with and make workable the general scheme of relocating its division points and shops throughout its entire system, and in order to make the distances between the division points located in Kansas and Texas, and those located in Oklahoma uniform with the distances between division points and shops throughout its system, it has become necessary to remove the division point and shops heretofore located at Sapulpa to Tulsa. That appellee was about to carry out the Oklahoma part of the general scheme above described when enjoined by said Commission.

The record further shows that as a part of its said general revision scheme extending throughout the states, through which its lines run, said management on or about the 1st day of January, 1927, prepared and published a train schedule changing the run of certain of its interstate trains operating partially in Oklahoma, by providing therein that the runs of said trains be changed so that same would be from Oklahoma City to Tulsa, from Fort Scott, Kansas to Tulsa, and from Monett, Missouri to Tulsa, and from Sherman, Texas to Tulsa, in-

stead of from Oklahoma City, Fort Scott, Monett and Sherman to Sapulpa respectively, and that the crews on said trains change at Tulsa instead of at Sapulpa. That said change in said schedule was necessary to the carrying out of the general scheme so adopted by the management of said railroad throughout its system and throughout the states of the Union through which its lines extend. That it was the adoption of said schedule and the announcement on the part of said railway company of its intention to put into effect said scheme and said schedule, that caused the last complaint to be filed before the Corporation Commission by appellants, J. F. Lawrence and C. C. Taylor, and that caused said Corporation Commission to issue its last order preventing said change and the removal hereinbefore described.

By reason of the fact that appellee considered the statute upon which appellants' actions as above described were based unconstitutional, unnecessary, discriminatory and void, and that the actions of appellants thereunder constituted an unwarranted interference with the management of appellees' business, and a regulation of and burden upon the interstate commerce business of appellee, this action was instituted.

BRIEF OF ARGUMENT.

As has been shown by our statement gathered from the record in this cause, the Corporation Commission of the State of Oklahoma, acting under and by virtue of a statute passed by the Legislature of Oklahoma, enjoined the Frisco Railway Company from taking any steps toward moving its division points or shops from the town of Sapulpa, and also enjoined said railway company from putting into effect certain schedules which are a part of a general scheme and plan touching not only transportation of passengers and freight in Oklahoma, but in various other states of the Union through which the line of said railway runs.

The Frisco Railway Company filed its bill of complaint in the United States District Court for the Northern District of Oklahoma, complaining and charging that the Statute of Oklahoma upon which the Corporation Commission based its power to act in the premises was unconstitutional and void for the several reasons named in said complaint. It appears from the allegations of the bill of complaint filed by the railway company, that such railway company is a non-resident of the State of Oklahoma and a resident of the State of Missouri; that it is, in the strictest sense, an interstate railroad, transporting passengers and freight by continuous lines

through several states of the Union. As such non-resident, it appealed to the United States Court, by bill in equity, to restrain the Corporation Commission from enforcing the statute aforesaid, under which it claimed to act, thereby putting in question the validity and constitutionality of said act.

Since the case of *Ex Parte Young,* 209 U. S. 123, 52 L. ed. 714, which held that where the law of a state is unconstitutional on its face, and such law is attacked in the Federal Court for such reason, the Federal Court takes jurisdiction, because it will necessarily be presumed that the law will be enforced and that the party whose rights were to be invaded by such enforcement, need not wait, but can attack the law by a quick application to the Federal Courts, it has been held consistently that a non-resident citizen can go into the Federal Court in the first instance and attack a statute which is unconstitutional on its face. And, indeed, it would seem to be a waste of this Court's time to attempt to establish by reason and authority that no state statute can deprive a non-resident of the right to go into a Federal Court and attack or enjoin the enforcement of a law which is violative of and in conflict with the Constitution of the United States. The question, therefore, is, we respectfully submit, whether the act of the Okla-

homa Legislature under which the Corporation Commission moved and is attempting to move in this cause, is a violation of any constitutional right of the railway company and, therefore, in conflict with the Constitution of the United States.

In passing it may be material to say that more than thirty years ago the Frisco Railway Company entered what is now the State of Oklahoma, under congressional authority, and established a division point or terminal at Sapulpa at that time.

With these preliminary statements we beg now to consider the grounds of unconstitutionality of the statute aforesaid, alleged in our complaint against the Corporation Commission and the other defendants in the cause.

Our first proposition we state as follows:

The Oklahoma Statute now under consideration is unconstitutional and void because it is an arbitrary and unreasonable exercise of the police power, and this vice appears on the face of the statute.

The police power of the various states of this Union, the manner of its exercise, and the limitation of its exercise, have been the subject of consideration by this Honorable Court from the beginning of the government. No precise definition of what is designated as police power

has ever been attempted by any court, and whether there has been a proper and lawful exercise of such police power depends always upon the facts and conditions of the particular case under consideration. Whatever may be the origin and source of the police power of any sovereignty, and especially of the states of this Union, it has been distinctly pronounced in practically every state in the Union, by the lower Federal Courts, and by this Honorable Court, that its exercise must be reasonable; that it must not be arbitrary, and that it must have some reasonable relation to the class of subjects included in the police power. The authorities upon this subject have been collated with great care in Sections Nos. 227 and 228 of the 6th volume of Ruling Case Law, and to save time and necessity of quoting at length the cases there cited, we beg leave to quote in full the text. Beginning with the fourth line of Section 227, the text is as follows:

> "The law must tend, in a degree that is perceptible and clear, toward the preservation of the public welfare, or toward the prevention of some offense or manifest evil, or to the furtherance of some object within the scope of the police power. The mere assertion by the legislature that a statute relates to the public health, safety or welfare does not in itself bring that statute within the police power of a state; for there must be obvious and real connection between the actual provisions of a police

> regulation and its avowed purpose, and the regulation adopted must be reasonably adapted to accomplish the end sought to be attained. One application of the familiar rule that the validity of an act is to be determined by its practical operation and effect and not by its title or declared purpose is that a constitutional right cannot be abridged by legislation under the guise of police regulation; since the legislature has no power, under the guise of police regulations, to invade arbitrarily the personal rights and personal liberty of the individual citizen, or arbitrarily to interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations, or to invade property rights."

Again in Section 228, commencing near the top of the page, this language is used:

> "All statutory restrictions of the use of property are imposed upon the theory that they are necessary for the safety, health, or comfort of the public. Accordingly if a restriction or regulation is without reason or necessity it cannot be enforced."

To sustain these different propositions cited in the text above quoted, cases from nearly every state in the Union have been cited, and a close examination of those cases by the writers of this brief, has convinced them that the cases are carefully digested.

We pause here to call attention to and quote from certain leading cases decided by this Honorable Court which laid down the rule with even greater clearness and conciseness than the opinions from the state courts.

We call attention to the case of *Lochner* v. *New York*, 198 U. S. 45, 49 L. ed. 937, where Mr. Justice Peckham, speaking for the Court used this language:

> "It must, of course, be conceded that there is a limit to the valid exercise of the police power by the state. There is no dispute concerning this general proposition. Otherwise the 14th Amendment would have no efficacy and the legislatures of the states would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health, or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext,—become another and delusive name for the supreme sovereignty of the state to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this Court, therefore, where legislation of this character is concerned, and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty, or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family?
>
> "This is not a question of substituting the judgment of the Court for that of the legislature. If the act be within the power of the state it is valid, although the judgment of the court might be totally opposed to the enactment of such a law. But the question would still remain: Is it within the police

power of the state? and that question must be answered by the Court."

We call attention to the case of *Lawton* v. *Steele*, 152 U. S. 133, 38 L. ed. 385. This case is a leading case upon this subject, and has been cited time and again by this Court, and most frequently by the courts of the various states passing upon the limits of the police power. Near the bottom of page 388, Mr. Justice Brown who delivered the opinion of the Court, uses this language:

> "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

In this same case Mr. Chief Justice Fuller, on page 391, said:

> "The police power rests upon necessity and the right of self-protection."

Again in *C., B. & Q. Ry. Co.* v. *Illinois*, 200 U. S.

561, 50 L. ed. 596, this Honorable Court speaking through Mr. Justice Harlan, used this language:

> "If the means employed have no real, substantial relation to public objects which government may legally accomplish,—if they are arbitrary and unreasonable, beyond the necessities of the case,—the judiciary will disregard mere forms, and interfere for the protection of rights injuriously affected by such illegal action."

Again on page 610 Justice Harlan says:

> "There are, unquestionably, limitations upon the exercise of the police power which cannot, under any circumstances, be ignored."

We call special attention to the language of Mr. Justice Brewer in his dissenting opinion in that cause, on page 612, not for the purpose of attempting to challenge or weaken the opinion of the majority in that cause, but to bring out, if possible, more clearly limitations upon the police power of the states. Commencing at the bottom of that page the learned Justice said:

> "It seems to me the police power has become the refuge of every grievous wrong upon private property. Whenever any unjust burden is cast upon the owner of private property which cannot be supported under the power of eminent domain or that of taxation, it is referred to the police power. But no exercise of the police power can disregard the constitutional guaranties in respect to the taking of private property, due process, and equal protection, nor should it override the demands of natural justice."

We have quoted at some length from these opinions which are, of course, familiar in every detail to this Honorable Court, but which we are compelled to present in order, if possible, to sustain the merit and justice of our contention. We say, therefore, that this statute now under consideration is an arbitrary, unnecessary and capricious exercise of legislative power. To what known and conceded source of the police power can this statute be traced? What public purpose within the purview of the police power is sought to be established and enforced by this statute? It cannot be referred to the police power as to health, because the health either of the employes of a railroad or the public at large cannot be involved in the naked question as to whether or not the railway company ought to move its division points or shops. It cannot be placed upon the morals, or the safety, or the public welfare, because the question as to whether division points or shops shall be moved from one place to another on a railroad line does not and cannot involve, it seems to us, either the question of morals, safety, or public welfare. The truth is, on the very face of things, the location of division points or of shops, is a matter touching the conduct of a railroad's business, and must be confided to the business judgment of such railroad.

Recurring to the language of the adjudications above

cited, does this statute, by its terms, tend, in a degree that is perceptible and clear, toward the preservation of the public welfare? Is it designed to accomplish a purpose properly falling within the scope of the police power? Does it not, on its face, show an arbitrary interference with the right of a railroad company to operate and control its own business? Does it, anywhere, show, on its face, from the most liberal construction that it was enacted for the safety, health, comfort or welfare of the public? Does it not, on its face, show that it is a restriction or regulation without reason or necessity? We, therefore, respectfully submit that this statute under consideration is arbitrary, unreasonable, unnecessary for the promotion of public good or for the protection of public right; that it is an unjustified interference with the right of a railway company so to conduct and manage its property as to best serve the public. If this be true, then such statute is unconstitutional as an unauthorized exercise of police power, and the learned gentlemen who oppose us in this case have attempted to justify this statute solely as a lawful exercise of police power by the state, and, therefore, the question now under consideration is actually at issue in this cause.

Attorneys for appellants in this cause, realizing that the body of this statute cannot be justified on any law-

ful exercise of police power, attempt to save the statute by contending their first proposition, that this act of the legislature is primarily designed to protect the health of railroad employes and their families, and they quote the last provision of the statute, to-wit:

> "That the Commission shall hear evidence and make a finding of fact as to the sanitary and habitable conditions of the proposed location with reference to whether the same would endanger the health of the employes of the applicant or the health of their families."

Your Honors, from reading the whole statute, will see that the portion just quoted has no relation to the question as to whether a removal shall be had, but has relation only to the point to which the removal is made after the Commission has sustained the right to remove. In other words, the first thing to be decided by the Commission, is whether the railway company shall move its division points and shops. It is as to the right of the Commission to determine that question of removal, that we make our attack. On the face of the statute it is clear that the right in the first instance to remove is not to be determined (according to the very language of the statute), by a question of health, a question of morals, a question of safety, or a question of public welfare, but it is only after the right to remove has been granted that the sanitary clause of the statute is considered at all.

And, therefore, it seems to us as stretching credulity too far to say that a sanitary or health provision which relates only to the place to which the removal shall go, saves the whole statute as founded upon a police regulation for the public health. Clearly the question as to whether the railway company can remove from a certain place cannot involve the health of the employes of the community, and it is as against the power of the Corporation Commission to determine, in the first place, whether the railway company shall remove that we center our attack. We contend that when the legislature said to this railway company: "If your division point and shops have been located at a certain place for five years, you must get the permission of the Corporation Commission of this state to move such division point or shops," it was an arbitrary exercise of power by the legislature and an unnecessary exercise of power, not traceable to any legitimate source of the police power. We say that the legislature cannot save such statute by appending to it a sanitary provision with reference to where the division points or shops shall go after removal has been granted, and thereby assert that the whole statute is based upon the police power exercised for the health and safety of the employes.

The next attack which we make upon said statute is that it is a denial of due process of law and equal protection of the law under the Fourteenth Amendment to the Constitution of the United States.

We believe it is thoroughly settled that a corporation is within the protective terms of said amendment as to due process and equal protection. This being so, this railway company here and now contends that this statute unjustly discriminates between this railroad and other railroads in exactly the same position and engaged in exactly the same business; that a classification has been made which is unlawful, and which violates the Constitution of the United States.

Again we call attention to the substance of the statute. It declares that wherever division points and shops of any particular railroad have been located at a certain place for as much as five years, such railway company cannot move such division points or shops without the consent of the Corporation Commission, thereby leaving all railway companies, whose division points and shops have been located at a particular point for less than five years, free and unrestrained to move without the consent of the Corporation Commission, and to any place they see fit. We realize as to whether the question of classification in a given case is violative of the equal protection of the laws is a difficult one, and has been the

source of much debate and consideration by this Honorable Court, but the general rule which determines such question has been very clearly stated by this Court in numerous decisions. We quote from the case of *Soon Hing* v. *Crowley,* 113 U. S. 703, 28 L. ed. 1145, where Mr. Justice Field, speaking for the Court, said:

> "The discriminations which are open to objection are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions. It is only then, that the discrimination can be said to impair that equal right which all can claim in the enforcement of the laws."

We beg to cite the case of *State of Iowa* v. *Garbroski,* 111 Iowa 496, and found in 56 L. R. A. 570, with notes, where Justice Ladd in delivering the opinion of the Court, renders a lengthy and very learned opinion, citing cases from other states and from this Honorable Court to sustain it. On page 571 of the case in 56 L. R. A., the Iowa Reports not being accessible to us, that Court said:

> "The extent to which division may be carried without running into special, or what is known as 'class' legislation, is sometimes difficult to determine. All the authorities agree that the distinction in dividing may not be arbitrary, and must be based on differences which are apparent and reasonable. Thus, the Supreme Court of Minnesota, in *Nichols* v. *Walter,* 37 Minn. 264, 33 N. W. 800, declared: 'The true, practical limitation of the legislative power to classify is that the classification shall be upon some

apparent natural reason—some reason suggested by necessity; by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them.' This was approved in *Lavallee* v. *St. Paul, M. & M. R. Co.*, 40 Minn. 249, 41 N. W. 974. In *Johnson* v. *St. Paul & D. R. Co.*, 43 Minn. 222, 8 L. R. A. 419, 45 N. W. 157, the same court, through Mitchell, J., said: 'It has been sometimes loosely stated that special legislation is not class, "if all persons brought under its influence are treated alike under the same conditions." But this is only half the truth. Not only must it treat alike, under the same conditions, all who are brought "within its influence," but in its classification it must bring within its influence all who are under the same conditions.' In *State ex rel. Richards* v. *Hammer*, 42 N. J. L. 439, the Supreme Court of New Jersey held that 'the true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having a reference to the subject-matter of the proposed legislation, between the objects or places embraced in such legislation and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.' The Supreme Court of Tennessee, in *Sutton* v. *State*, 96 Tenn. 696, 33 L. R. A. 589, 36 S. W. 697, very tersely states the law to be that legislation, to be constitutional and valid, 'must possess each of two indispensable qualities: First, it

must be so framed as to extend to and embrace equally all persons who are or may be in the like situation and circumstances; and, secondly, the classification must be natural and reasonable, not arbitrary and capricious.' "

The Court then cites numerous cases, and after giving such citations, continues:

"In the last case (being the case of *Magoun* v. *Illinois Trust & Sav. Bank,* 170 U. S. 283, 42 L. ed. 1037) Justice McKenna, speaking of the equal protection of the laws required by the 14th Amendment to the Constitution of the United States, said: 'It does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privileges conferred and the liabilities imposed.' The same Court, speaking through Justice Brewer, in *Gulf, C. & S. F. R. Co.* v. *Ellis,* 165 U. S. 150, 41 L. ed. 666, declared that 'the differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations.' "

In this opinion by Justice Ladd, he was considering a statute of Iowa which exempted all persons who had served in the Union army or navy from the provision requiring all persons peddling goods outside of a city or town to pay a license tax. As to this classification, the learned Judge said:

"The classification here attempted rests solely on a past and completed transaction, having no relation

> to the particular legislation enacted. All citizens are divided into two classes,—those who served in the army and navy thirty-five years ago, and all those who did not. True, as suggested, the veterans came from no particular class; but the trouble with this statute is that it attempts to make of them a class in legislation, in the operation of which there can be no substantial distinction between them and others."

In conclusion we call attention to the case of *Gulf, Colorado & Santa Fe Railroad Co.* v. *Ellis*, 165 U. S. 150, 41 L. ed. 666. Mr. Justice Brewer rendered the opinion of the Court in that case, and it is most certainly a powerful and illuminating examination of the question now under consideration. In the body of that opinion, Justice Brewer says:

> "No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

And later on, the learned Justice quotes with approval the language of Judge Black in *State* v. *Loomis*, 115 Mo. 307, which is as follows:

> "Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a

> reasonable basis for separate laws and regulations. Thus, the legislature may fix the age at which persons shall be deemed competent to contract for themselves, but no one will claim that competency to contract can be made to depend upon stature or color of the hair. Such a classification for such a purpose would be arbitrary and a piece of legislative despotism, and therefore not the law of the land."

We think it useless to cite further authorities as to the rule to be adopted in determining when unlawful classification has been made. In the State of Oklahoma there are many interstate railroads. Some of them older, and some younger than the others. The legislature has, by arbitrary action fixed a period of five years under this statute, separating these railroads, placing a burden by virtue of said arbitrary time of five years upon some of these railroads, and leaving the other class unaffected and untouched by said burden. As said by the Supreme Court of Minnesota in the case of *Johnson* v. *St. Paul & D. R. Co.*, 43 Minn. 222, quoted by Judge Ladd in the foregoing opinion:

> "Not only must it treat alike, under the same conditions, all who are brought 'within its influence,' but in its classification it must bring within its influence all who are under the same conditions."

All the railroads in Oklahoma do the same kind of business. They carry passengers and they carry freight, and yet if one of these railroads has established its

division point and shops at a given place for a period of less than five years, it need not go to the Corporation Commission to get permission to move these division points, but if it so happens that an older railroad, which has more than five years ago established its division point and shops at a certain place, desires to move, it must get the consent of the Corporation Commission to do so. It seems to us that this is an unjust classification and puts a burden upon some railroads that is not put upon others when all such railroads are engaged in identically ehe same business. However this may be, we feel that we are certainly right that this distinction or classification is purely arbitrary and not based on differences which are apparent and reasonable. It seems to us to be clear that there is not such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them.

In this connection, we desire to call the Court's attention to counsel's second point as contained at page 12 of their brief filed herein to the effect that a state may legislate to protect the health of railroad employes, and say that the act in question is a valid exercise of the state's police power by reason of the sanitary provision contained in said act. If the validity of the act in ques-

tion is to depend solely upon the sanitary provision contained therein, then we say the act is discriminatory and void and creates a classification of the railroad employes in the State of Oklahoma so unreasonable and unjustified that it cannot be sustained. The state may legislate to protect the health of railroad employes, but it cannot unreasonably and arbitrarily classify the employes and then legislate to protect only those included within an unjustified and arbitrary classification. If the sanitary provision as contained in said act is depended upon for the validity of said act, then we have legislation that divides railroad shops and division points within the state into two arbitrary classes, to-wit: one class of shops and division points that have been located at given points for five years or more, another class of shops and division points that have been located at given points for less than five years. The act provides that all those shops and division points included within the first class cannot be removed until the places to which they are to be removed are declared, by the Corporation Commission, to be sanitary. All those included within the second class, however, may be removed at will without any supervision from the Corporation Commission. What relation has the period of five years with the effect that an unsanitary locality will have upon railroad employes?

Would it not be just as injurious to the health of those employes engaged at shops which have been located at a place for less than five years to be moved into an unsanitary vicinity as it would be to those employes engaged at shops which have been located at a given point for more than five years? That such a classification is unjustified, capricious, arbitrary and discriminatory, it seems to us, is so clear as to make further argument along this line unnecessary.

The next attack which we make upon this statute is that the legislature selected an arbitrary point of time, and from that arbitrary point of time changed the rules of evidence, and by reason of such arbitrary point of time so selected, made and declared a prima facie case against removal by the railway company.

We do not contend of course that ordinarily any citizen has a vested right in the rules of evidence. These rules may be changed to meet given cases, and the conceded existence of one fact may, in proper cases, be made *prima facie* evidence of the existence of a main fact to be proved or determined, but this right of the legislature is not arbitrary, and if the pretended exercise of the right appears clearly to be arbitrary, the legislation cannot stand the test. This doctrine is not new to the courts. This matter is considered and the principal cases dealing with the proposition are cited and quoted

in the case of *People* v. *Mallon*, 222 N. Y. 456, 119 N. E. 102. In that case the Court declared that in the matter now under consideration the true rule is:

> "In the exercise of this power numerous statutes have been enacted providing that proof of one fact shall be *prima facie* evidence of the main fact in issue; and where the inference is not purely arbitrary, and there is a rational relation between the two facts, and the accused is not deprived of a proper opportunity to submit all the facts bearing upon the issue, it has been held that such statutes do not violate the requirements of due process of law."

Attorneys for appellants in this cause make little discussion of this proposition, but content themselves with citing *James-Dickinson Farm Mortgage Company et al.*, v. *Harry*, decided by this Court January 10th, 1927, and not officially reported. We submit that this latter case does not control the situation here. The statute considered in this last case was one to protect the people of the state against fraud, and this is one of the most ancient sources of the police power. It was contended in that case that the statute violated the due process clause of the 14th Amendment, in providing that whenever the kind of promise appearing in that case has not been complied with by the party making it within a reasonable time, "it shall be presumed that it was falsely and fraudulently made, and the burden shall be on the party making it to show that it was made in good faith but

was prevented from complying therewith by the act of God, the public enemy, or by some equitable reason."

Here, there was a clear rational relation between the failure to keep the promise and the fraud inhering in its making, which was the ultimate fact to be found. The learned Justice used this language:

> "It is well settled that a state may consider proof of one fact presumptive evidence of another, if there is a rational connection between them,"

and the learned Justice cited the case of *Hawes* v. *Georgia*, 258 U. S. 1, 66 L. ed. 431. In that case Mr. Justice McKenna used the following language, and by an application of this language to the case at bar we cannot escape the conclusion that this arbitrary presumption, raised in this statute by reason of a certain point of time, denies to certain railway companies the equal protection of the law under the Fourteenth Amendment:

> "In *Hawkins* v. *Bleakly*, 243 U. S. 210, 61 L. ed. 678, it is said: 'The establishment of presumptions, and of rules respecting the burden of proof, is clearly within the domain of the state governments, and that a provision of this character, not unreasonable in itself and not conclusive of the rights of the party, does not constitute a denial of due process of law.'
>
> "Undoubtedly there must be a relation between the two facts. That is, if one may evidence the other, there must be connection between them,—a re-

quirement that reasoning insists on, and, necessarily, the law."

Again Justice McKenna in the same case says:

"We agree, therefore, with the Supreme Court of the state, that the existence upon land of distilling apparatus, consisting of the still itself, boxes and barrels, has a natural relation to the fact that the occupant of the land has knowledge of the existence of such objects and their situation."

Testing this statute by these rules and observations laid down by Justice McKenna, can anyone say that there is a rational relation between five years' occupation and the right to remove? What has the period of occupation to do with this right to remove? By what course of reasoning can we say that five years' flat raises a presumption against the right to remove, but four years, eleven months and twenty-nine days raise no such presumption? Why is not the point of time selected as a basis for changing the rules of evidence and fixing a presumption against removal, purely arbitrary and capricious? This Honorable Court and many of the courts of the Union, as we shall show under another subject in a later portion of this brief, have held that although a railway company may make a contract to locate shops or division points perpetually at a given place, such contract is opposed to public policy. An injunction will not lie to prevent

the railway company from moving such division points or shops, especially where the railway company has remained there for a reasonable length of time.

In the celebrated case of *Texas & Pacific Railway Company* v. *Marshall*, 136 U. S. 393, 34 L. ed. 385, this Court, speaking through Mr. Justice Miller, said that six years was a reasonable time. This case and all cases of a kindred character, were based upon the salutary proposition that a railway company owes its highest duty to the public, and next to that, to its stockholders, and if ever the exigencies of the public require a change in division points and shops, all private claims and rights must yield to such exigencies. It would, therefore, seem to follow that the longer a railway company had occupied a given place with its division points or shops, the more certain it would be that exigencies would arise which required a removal in the interest of the public. Therefore, the presumption, if any existed at all, would be in favor of removal rather than against it. Here the legislature reverses the presumption of continued occupation and emphatically and arbitrarily declares that five years' occupation raises a presumption against the right to remove, and makes a *prima facie* case in favor of the state. Justice McKenna said that the selection of one fact as *prima facie* proof of another, makes, necessarily, the se-

lected fact evidence the existence of the other ultimate fact, and he says there must be some rational connection between them. He further says that the requirement that this rational relation must exist, is demanded by reason and, necessarily, by the law. The legislature has declared when a railway company has established its division points or shops at any place for five years, that this five years bears a rational relation to the question as to whether removal shall be granted by the Corporation Commission. We say that there is no rational relation between them, and that it is a waste of the time of this Honorable Court to argue that five years' occupation by the railway company of a given place for shops and division points, has anything, even remotely, to do with the question as to whether or not, under all the circumstances of the case, a railway company has a right to remove such division points or shops.

We, therefore, respectfully submit to the Court without extending this argument, that the arbitrary period of five years, as fixed by the legislature in this statute, has no rational relation to the question as to whether or not the railway company shall be permitted to remove. Having no such rational relation, the statute must fall.

The three points which we have discussed in the foregoing argument, raise questions which are neither

technical nor frivolous. There has never been a time or a case in the history of this Court when propositions like the foregoing have not received its most careful consideration, because, as said by Mr. Justice Brewer for this Court in the case cited above, no duty is more pressing upon this great Court of last resort than to see that the equal protection of the laws and due process of law shall be maintained throughout this Union. If a police regulation is arbitrary, oppressive, or capricious, not traceable to any known source of police power for the public welfare in some way, it offends against the Constitution. If, in the exercise of the police power, the legislature has made an artificial and unreasonable classification, thereby giving to some persons in one class rights and privileges not accorded to persons in the same class, such exercise of power offends against the Constitution. If the legislature, in the pretended exercise of its police power, arbitrarily selects one fact as *prima facie* evidence of another fact, thereby changing the ordinary rules of evidence common to all citizens, such accepted fact must bear a rational relation to the fact to be proved, and if it does not, this offends against the Constitution. It is not often that a state statute is open to all these objections. It is clear, from a consideration of this whole record, that this statute was passed

hastily and without due consideration, and to meet conditions such as the legislature thought existed at Sapulpa. The statute was passed while the Sapulpa litigation, before the Corporation Commission, was pending. Proof had been made at the hearing before the Commission by the inhabitants of Sapulpa, as shown by this record, that West Tulsa, the place to which the railway company desired to remove its shops from Sapulpa, was unsanitary, and it is fair to assume that this very litigation, and the facts there proved, influenced the passage of the statute now under consideration. It cannot be said that if the legislature had in view when it passed such statute, the purpose of protecting the inhabitants of the particular town in question, who had built and acquired property with reference to the location of division points and shops, that this was a purpose justifying the exercise of the police power, because the inhabitants of a particular town cannot possibly have any vested right in the continued occupation of certain portions of the town by a railway company for shops or for the establishment of division points.

The Supreme Court of Oklahoma has frequently held that the increase or decrease in property value caused by change of location or abandonment of depots, yards, shops and other facilities, are not matters which can be

considered as affecting, in any way, the right to make such changes; that public convenience, sufficient accommodations and sufficient facilities, as those terms must be used with relation to the requirements of a public service corporation, mean conveniences, etc., with relation to the business of a common carrier on the part of the railroad using public.

In *St. Louis, Iron Mountain & Southern Ry. Co.* v. *State,* 31 Okla. 509, 122 Pac. 217, Justice Dunn, speaking for the Court, said in the body of the opinion:

> "Railroad depots and their locations are public facilities for the use and convenience of the people having business to transact with the companies and the wishes of other people or the fact that they purchased property in reference to the location of the depot is absolutely of no consequence whatsoever in locating or relocating it. No property owner can acquire a vested right in the location of a depot, and as these considerations were the primary ones affecting the action of the commission in this instance, and not being competent to be considered, they must be eliminated from the case, leaving alone what the commission concedes should outweigh any others advanced."

Again in *Wharton* v. *Miller,* 33 Okla. 771, Justice Williams, now Federal Judge of the Eastern District of Oklahoma, speaking for the Oklahoma Court, said:

> "The fact that the construction and maintenance of the station at W. may have the consequential or incidental effect of building a town at that point and

> retarding the growth of adjacent towns at stations B. and M., and thereby causing the depreciation of property located in said towns, is not a sufficient legal reason for parties interested in property located in either B. or M. to complain at the parties residing at W. being afforded all reasonable facilities, conveniences, and service as patrons of such public service corporation at said station."

Again in *Missouri, O. & G. Ry. Co.* v. *State,* 53 Okla. 341, 156 Pac. 1155, Chief Justice Kane speaking for the Court said:

> "The location of a railway station, of course, belongs to the public duties of the commission, when the question is, whether its location at a certain point is for the benefit and interest of the traveling or railroad using public. If, however, these considerations are ignored, or, if considered, are held to be subordinate, and other elements are considered as paramount, which are aside from either the public duty or the interest of the traveling or railroad using public, or the necessities of the operation of the railroad, then an order made with the latter for a basis must be held to be unreasonable and without legal sanction."

And this we claim is the real "meat in the cocoanut." An inspection of this statute and the circumstances surrounding its passage discloses that the legislature did not have in mind, when it enacted such statute, the question of service to the patrons of the railroad, the shipper and the traveler; that it did not have in mind the welfare of such people who had business with the railroad; that it

did not have in mind the welfare of the employes of the railroad so far as the right to remove was concerned, but must have had in mind, in a large degree, the rights of the inhabitants of the town, in a property sense, which can never be taken into consideration, as shown by the Oklahoma cases above cited, as a basis for denying removal of division points, etc.

Our last contention is that the statute now under consideration is an attempted regulation of interstate commerce, is a direct burden upon interstate commerce, and interferes directly with interstate commerce.

We now come to the consideration of our last proposition which covers a much wider field than the propositions heretofore discussed, and is more difficult of solution, not because the general rules applicable to the subject to be discussed have not been clearly formulated and pronounced by this Honorable Court, but because of the great number of cases upon this subject and because the law attacked in each case is made to depend almost invariably upon the subject matter which the State Legislature has considered, and the extent to which the state, in acting upon such subject matter, has attempted to regulate or interfere directly with interstate commerce. We contend that the statute which we are attacking in this cause is, on its face, an attempted regulation of interstate commerce; that in its necessary operation it will

seriously interfere with interstate commerce; that if sustained, it amounts to state operation of the railway's business, and that, therefore, this state statute is in the "teenth" of the commerce clause of the Constitution. It would be almost an affront to this Honorable Court to take its time to discuss the origin of this commerce clause of the Constitution, its necessity and the salutary effect it has had in the protection of property and business within the confines of the American Union. We do know that, in its very essence and purpose, it is a limitation upon the police power of the states. It was intended to make commerce between the states and foreign nations free and untrammeled, subject only to the controlling and regulating power of the National Government. It is not denied by us, and it cannot be denied, that under many decisions of this Court police regulations of a state, with reference to interstate railroads, have been sustained and will be sustained, and this is so even though Congress has passed no legislation with reference to the subject matter, but the rule is, and has always been, that the state statute in question must be necessary; that it must serve some public purpose within the reach of the state through its police power, and that under the guise of police power the state can never be permitted to regulate, in the least degree, interstate commerce or to place

a direct burden upon the same. It is obvious, therefore, that every state statute under consideration by this Court, as to whether it was a valid exercise of the police power of the state, considering its operation and effect as against the commerce clause of the Constitution, will depend not only upon the language of the law but the subject matter covered by the law, and the relation of that subject matter to interstate commerce.

This Oklahoma statute confers the power upon the Corporation Commission of the state to determine whether a railway company, largely interstate in its character, and doing largely interstate business between many states, shall change its division points from one place to another on its line, or its shops from one place to another on its line. It becomes necessary, therefore, to consider the subject matter of this legislation and its relation to interstate commerce as such. It is pertinent, therefore, to inquire what division points are; what they mean to an interstate railroad, and what part their locations play in the movement of interstate commerce and in the successful conduct of the railway's business in the interest of the public and of the stockholders of the road.

In our complaint filed in the Federal Court in this case, we set up that this statute fetters and interferes with interstate commerce of the Frisco Railroad; that it

is, in effect, a regulation of the commerce of that road, and a direct interference with such commerce, and we took affidavits from various officials and employes of the road to ascertain just what division points are; what is their purpose and meaning, and what part they necessarily play in the interstate business of a railroad. It was established, and not denied by appellant at the hearing before the Three Judges, that the creation of division points along the line of an interstate railroad was primarily for the purpose of increasing the facilities for handling interstate and intrastate commerce; that division points are established at one place or the other, according to the necessity of traffic, and for the purpose of facilitating that traffic; that a division point established one year may not be the proper division point the following year; that, in early days, division points were more numerous and closer together by reason of the inferiority of the motive power and tracks, but in modern days, by reason of improved trackage and improved motive power, division points are constantly lengthened, and an effort is made wherever possible, in the interest of economy, to abandon as many division points as practical; that division points are never made for the convenience, of either the passenger or the shipper, but for the purpose of facilitating the commerce coming to the

railroad; that the shipping public is constantly demanding better service and more dispatch in the movement of freight, and that the traveling public is demanding faster trains and fewer stops in order that they may reach the busy centers on interstate railroads, and that in order to satisfy this growing demand of the traveling and shipping public, great competition has arisen between railroads, and, therefore, it is necessary for any particular railroad to meet these demands in order to hold its business. It was also shown that if a division point is no longer practical from a standpoint of business or economy, or from a standpoint of quick service, great confusion will result in the management of trains; great delays will occur in the movement of freight and passengers if the company is not permitted to select the points at which it will establish divisions, or is not permitted to leave a point where a division has been established, and it was also shown that a large percentage of all cars moving on this railway company's line are interstate commerce; that the shops are a necessary incident to interstate commerce in order to keep the equipment in proper condition to move the cars, and in the natural course of things must, in nearly every case, be located at division points; that neither the traveling public nor the shipping public, nor those who have busi-

ness with the railroad, are affected one way or the other either by the location of division points or the location of repair shops; that the public convenience is in no way served by such locations, but they are located primarily and purposely as necessary instrumentalities in commerce in order to make possible proper and efficient movement of that commerce. It was shown that by reason of the great increase in motive power and improvement in trackage, the employes of the railway company can go a greater distance in the same length of time than they could go under the old instrumentalities; that it is unnecessary to change crews on these interstate trains as often as under old conditions; that, at division points, crews generally are changed, engines are overhauled and frequently changed; that all these things create delay in transportation, and, therefore, the less division points the less delay on this account as to passengers and freight; that inasmuch as this particular railway runs its trains by continuous passage through many states of the Union, it is necessary to adjust its division points in each state to serve *through transportation*, and that this was a matter which required the judgment of experienced railroad men, familiar with the business of the road, familiar with its obligations to the public and familiar with the demands of the public.

It was shown that the division point at Sapulpa was established more than thirty years ago. At that time the Frisco Railroad was just entering the Indian Territory, and for many years Sapulpa was the end of the terminus of the line, and that for that reason it was natural and practical to establish a division point at Sapulpa, but that since then the population through which the railroad runs has vastly increased, and that the business interests of the country have very much expanded; that large cities have grown up on the line of the railroad; that Tulsa is now a city of more than 100,000 people, and only fourteen miles from Sapulpa, and that Oklahoma City, located on the line of said railway, is only about one hundred miles distant from Sapulpa; that the change in population, change in volume of the road's business, and the growth of cities—all these things have made it absolutely necessary, in the efficiency and economy of the service, to readjust division points to abandon some and acquire others, and that these changes in conditions now make it imperative that the railroad company move its division points from Sapulpa, and that the holding of the division points and shops at Sapulpa will result in great loss annually to the railway company, which loss is stated in exact figures and terms.

In the examination of this statute it becomes neces-

sary carefully to examine the subject matter of this legislation. It is not denied that in a proper case a state may pass a valid statute, affecting an instrumentality of interstate commerce, provided such instrumentality is not so necessary a part of interstate commerce and so intimately connected with the commerce itself as to be a part of that commerce. Of course, if the state statute touches directly interstate commerce, it falls, because whether Congress has acted or not, the state cannot regulate commerce as such, nor can it fetter or interfere with, in an unreasonable degree, that commerce, because a decided interference with interstate commerce by interfering with an instrumentality of commerce, is just the same as if the state had attempted, in express terms, to regulate that commerce. If the state statute acts upon commerce itself, it cannot stand. If it acts upon an instrumentality of commerce in such a way as to interfere directly with that commerce, the act still cannot stand.

From the statement of facts above mentioned, which is conceded, we think, to be accurate in this case, division points must be selected with great care. They must be selected so as to co-ordinate and be in just accord with division points established in the other states through which the railroad runs. Division points and shops which are incidental thereto, are not like an engine or the track upon which the engine runs, but their relation

to the commerce is more intimate, more comprehensive, and they are, indeed, it seems to us, an integral part of the commerce itself. We contend, therefore, that the subject matter of this legislation is so far a part of the commerce of the country, and so thoroughly enters into the life of that commerce and the discharge of the railway company's duty to the public, as to be beyond the power of the state to be considered as a proper subject of legislation, or regulation or of control. These division points and shops are more than mere naked instrumentalities of commerce, and any interference by the state or any power given to a state agency to interfere with the location of division points or shops, must be a direct interference with the interstate commerce of the railway company, and this apart from another vital question in this case, which we shall discuss later, that the state cannot operate a railroad against the consent of the railroad; that a railroad is private property, and the railroad company must, in the very essence of things, be left to manage its own property for the best interest of the public and the stockholders.

We now beg to cite some of the adjudications of this Honorable Court upon these questions. We shall make the citations as brief as possible, placing these cases in juxta-position in order to show the different

utterances of the Court, and to find, if we can, from these decisions an established rule which will solve the question now under consideration.

In *Hannibal and St. Joseph Railroad Co.* v. *Husen*, 95 U. S. 465, 24 L. ed. 527, fifty years ago Mr. Justice Strong, speaking for the Court, said:

> "It may not (meaning the state) under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce. Upon this subject the cases in 92 U. S., to which we have referred, are very instructive. In *Henderson* v. *Mayor, etc.*, the statute of New York was defended as a police regulation to protect the state against the influx of foreign paupers; but it was held to be unconstitutional, because its practical result was to impose a burden upon all passengers from foreign countries. And it was laid down that, 'In whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect.' * * * These cases, it is true, speak only of laws affecting the entrance of persons into a state; but the constitutional doctrine they maintain are equally applicable to interstate transportation of property. They deny validity to any state legislation professing to be an exercise of police power for protection against evils from abroad, which is beyond the necessity for its exercise wherever it interferes with the rights and powers of the federal government."

Again in the latter part of the opinion Mr. Justice Strong uses this language:

> "Regarding the statutes as mere police regulations, intended to protect domestic cattle against infectious disease, those courts have refused to inquire

whether the prohibition did not extend beyond the danger to be apprehended, and whether, therefore, the statutes were not something more than exertions of police power. That inquiry, they have said, was for the legislature and not for the courts. With this we cannot concur. The police power of a state cannot obstruct foreign commerce or interstate commerce beyond the necessity for its exercise; and under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the courts to guard vigilantly against any needless intrusion."

Testing the legislation now under consideration by these rules, has not the statute gone far beyond its apparent object, and far into the realm which is in the exclusive jurisdiction of Congress? That it interferes with the commerce of the road, no argument seems necessary, and that there was no reasonable ground for the exercise of this particular power by the legislature equally appears.

In *Crutcher* v. *Commonwealth of Kentucky,* 141 U. S. 47, 35 L. ed. 649, Mr. Justice Bradley said:

"To carry on interstate commerce is not a franchise or a privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on

their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject.

"It has frequently been laid down by this Court that the power of Congress over interstate commerce is as absolute as it is over foreign commerce."

Again in the same opinion he says:

"But the main argument in support of the decision of the Court of Appeals is that the act in question is essentially a regulation made in the fair exercise of the police power of the state. But it does not follow that everything which the legislature of a state may deem essential for the good order of society and the well being of its citizens can be set up against the exclusive power of Congress to regulate the operations of foreign and interstate commerce."

In *Western Union Telegraph Company* v. *Kansas*, 216 U. S. 1, 54 L. ed. 355, this language is used:

"But the disavowal by the state of any purpose to burden interstate commerce cannot conclude the question as to the fact of such a burden being imposed, or as to the unconstitutionality of the statute as shown by its necessary operation upon interstate commerce. If the statute, reasonably interpreted, either directly or by its necessary operation, burdens interstate commerce, it must be adjudged to be invalid, whatever may have been the purpose for which it was enacted, and although the company may do both interstate and local business. This Court has repeatedly adjudged that in all such matters the judiciary will not regard mere forms, but will look through forms to the substance of things. Such is an established rule of constitutional construction as the adjudged cases abundantly show."

Again in *McNeill* v. *Southern Ry. Co.*, 202 U. S. 543, 50 L. ed. 1142, Mr. Justice White, speaking for the Court, said:

> "Without at all questioning the right of the State of North Carolina, in the exercise of its police authority, to confer upon an administrative agency the power to make many reasonable regulations concerning the place, manner, and time of delivery of merchandise moving in the channels of interstate commerce, it is certain that any regulation of such subject made by the state, or under its authority, which directly burdens interstate commerce, is a regulation of such commerce, and repugnant to the Constitution of the United States." * * *
>
> "The direct burden and resulting regulation of interstate commerce operated by an alleged assertion of state authority similar in character to the one here involved was passed upon by the Circuit Court of Appeals for the Sixth Circuit in *Central Stock Yards Co.* v. *Louisville & N. R. Co.*, 55 C. C. A 63, 118 Fed. 113. The Court in that case was called upon to determine whether certain laws of Kentucky imposed a direct burden upon interstate commerce and were a regulation of such commerce, upon the assumption that those laws compelled a common carrier engaged in interstate commerce transportation to deliver cars of live stock, moving in the channels of interstate commerce, at a particular place beyond its own line, different from the general place of delivery established by the railway company. In pointing out that, if the legislation in question was entitled to the construction claimed for it, it would amount to a state regulation of interstate commerce, it was aptly and tersely said:
>
> " 'It is thoroughly well settled that a state may

not regulate interstate commerce, using the terms in the sense of intercourse and the interchange of traffic between the states. In the case at bar we think the relief sought pertains to the transportation and delivery of interstate freight. It is not the means of making a physical connection with other railroads that is aimed at, but it is sought to compel the cars and freight received from one state to be delivered to another at a particular place and in a particular way. If the Kentucky Constitution could be given any such construction, it would follow it could regulate interstate commerce. This it cannot do.' "

In the same case Mr. Justice White said:

"Viewing the order which is under consideration in this case as an assertion by the Corporation Commission of its general power to direct carriers engaged in interstate commerce to deliver all cars containing such commerce beyond their right of way and to a private siding, the order manifestly imposed a burden so direct and so onerous as to leave no room for question that it was a regulation of interstate commerce. On the other hand, treating the order as but the assertion of the power of the Corporation Commission to so direct in a particular case, in favor of a given person or corporation, the order not only was, in its very nature, a direct burden and regulation of interstate commerce, but also asserted a power concerning a subject directly covered by the Act of Congress to regulate commerce and the amendments to that act, which forbid and provide remedies to prevent unjust discriminations and the subjecting to undue disadvantages by carriers engaged in interstate commerce."

In *Michigan Public Utilities Commission et al.* v. *Duke*, 266 U. S. 570, 69 L. ed. 445, the United States Su-

preme Court had to deal with what is known as Act 209 of the Public Acts of the State of Michigan, which imposed certain penalties upon plaintiff, who, under contracts with certain business firms, was transporting automobile bodies from Detroit, Michigan, to Toledo, Ohio. The act attempted to be enforced against the plaintiff provided that those similarly engaged in said state should furnish an indemnity bond conditioned upon the payment of all just claims and liabilities resulting from injuries to persons, property, etc., by reason of such business. The Supreme Court in that case said:

> "A state has no power to fetter the right to carry on interstate commerce within its borders by the imposition of conditions or regulations which are unnecessary and pass beyond the bounds of what is reasonable and suitable for the proper exercise of its powers in the field that belongs to it."

Again in *Lochner* v. *New York*, 198 U. S. 45, 49 L. ed. 937, which has already been quoted under another proposition, it is said:

> "In every case that comes before this Court, therefore, where legislation of this character is concerned, and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary intereference with the right of the individual?" * * *

We again cite a few lines from the decision of Mr.

Justice Brown in the case of *Lawton* v. *Steele*, 152 U. S. 133, 38 L. ed. 385:

> "To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

And we recur again to the declaration of Mr. Justice Butler in the case of *Banton* v. *Belt Line Ry. Corporation*, 268 U. S. 413, 69 L. ed. 1020, as follows:

> "Appellee's property is held in private ownership; and, subject to reasonable regulation in the public interest, the management and right to control the business policy of the company belong to its owners."

A careful examination of the rules laid down in these various cases to determine whether or not a state statute, such as the one now under consideration, is valid, will discover, we think, that the statute under consideration is unique and extraordinary, both in the character of language used and the undisclosed purpose for which

it was enacted. It is settled by the decisions above quoted that, in order to make this statute a valid exercise of police power, it *must be necessary;* it must be passed to serve some definite *public purpose* within state police power; it must not be arbitrary; must not seriously interfere with the management of private business, and it must not trench, in any way, upon the commerce power of Congress. We say, with great respect, that this statute is wholly unnecessary; that it does not serve any great public purpose; that it does not serve the public in its relation to railway companies; that it does not serve the employe in relation to railway companies; that it does not serve the shipper or the passenger, but can only, in its necessary operation as a practical piece of legislation, serve to benefit the inhabitants of a particular place, who have perhaps expended money and erected property on the faith of the location of a division point or shops at a particular place; that it is an attempt to interfere with the business of the railway company; that it is an attempt to regulate certain portions of that business which enter into the obligations of interstate railway companies to the public; that it is a subject matter, in its very nature, with which the state has no right to deal; and the above cases further emphasize the proposition that any act of a state legislature which *interferes*

in a pronounced degree with interstate commerce, is, in effect, a regulation of that commerce; that any state statute which fetters interstate commerce or which, in its necessary operation, fetters that commerce, is an invalid exercise of state power. A direct burden on interstate commerce or an unwarranted interference with interstate commerce, created and committed by a state, is *the equivalent of a regulation of* commerce which is exclusively within the domain of federal power. We cannot see how a trained mind, seeking rational conclusions from established facts, can reach a conclusion that this particular statute does not interfere seriously with interstate commerce; that it does not burden interstate commerce, and, therefore, that it is not a regulation of interstate commerce.

Cases distinctly analogous to the case at bar have been considered by this Court, and we beg now to cite some of those cases.

In *Mississippi R. Commission* v. *Illinois Central R. Co.*, 203 U. S. 335, 51 L. ed. 209, this Court was considering the validity of an order of the Mississippi Railroad Commission requiring a railway company to stop its interstate mail trains at a specified county seat where proper and adequate facilities were otherwise afforded

that station, and speaking through Mr. Justice Peckham, said:

> "The order cannot be viewed alone in the light of ordering a stop at one place only, which might require not more than three minutes, as asserted. It is the question whether these trains can be stopped at all at any particular station when proper and adequate facilities are otherwise afforded such train station. If the commission can order such a train to be stopped at a particular locality under such circumstances, then it could do so as to other localities, and in that way the usefulness of a through train would be ruined and the train turned from a through to a local one in Mississippi. The Legislature of a state could not itself make such an order, and it cannot delegate the power to a commission to do so, in its discretion, when adequate facilities are otherwise furnished.
>
> "The transportation of passengers on interstate trains as rapidly as can with safety be done is the inexorable demand of the public who use such trains. Competition between great trunk lines is fierce and at times bitter. Each line must do its best even to obtain its fair share of the transportation between states, both of passengers and freight. A wholly unnecessary, even though a small, obstacle, ought not in fairness, to be placed in the way of an interstate road, which may thus be unable to meet the competition of its rivals."

Why, may we ask, was the statute there held invalid? It was because, in its necessary operation and application, it interfered with interstate commerce; it interfered with the time to be made by the railway com-

pany; it interfered with the quick delivery of passengers and freight to given points on that interstate railroad; it prevented the railroad from meeting the competition of its rivals, and such a provision was wholly unnecessary if local facilities were furnished. If there is no power on the part of a state to require an interstate train, carrying the United States mail, to stop at a given point because of an unnecessary burden upon interstate commerce, how much less warrant there seems to be for the state to assume to determine where a railway company shall place its division points and its shops. It seems to us that the interference by a state with the time to be made by an interstate train is very much less in gravity and in scope than the interference of a state with the establishment by a railway company of division points and shops.

In *Southern Railway Co.* v. *King*, 217 U. S. 524, 54 L. ed. 878, which involved a statute regulating the approach of interstate trains to dangerous crossings, signals to be given, etc., Mr. Justice Day said: :

> "It is consistent with the former decisions of this Court, and with a proper interpretation of constitutional rights, at least, in the absence of congressional action upon the same subject matter, for the state to regulate the manner in which interstate trains shall approach dangerous crossings, the signals which shall be given, and the control of the train

> which shall be required under such circumstances. Crossings may be so situated in reference to cuts or curves as to render them highly dangerous to those using the public highways. They may be in or near towns or cities, so that to approach them at a high rate of speed would be attended with great danger to life or limb. On the other hand, highway crossings may be so numerous and so near together that to require interstate trains to slacken speed indiscriminately at all such crossings would be practically destructive of the successful operation of such passenger trains. Statutes which require the speed of such train to be checked at all crossings so situated might not only be a regulation, but also a direct burden upon interstate commerce, and therefore beyond the power of the state to enact."

The constitutionality of this particular statute was sustained, but the observation of Mr. Justice Day above quoted show that this statute went to the very limit of police power; that such unusual and necessary requirement wth reference to the speed of trains would be a direct burden upon interstate commerce.

Mr. Justice Holmes and Mr. Justice White dissented in that case. Mr. Justice Holmes used this language on page 874:

> "It seems to me a miscarriage of justice to sustain liability under a statute which possibly, and I think probably, is unconstitutional, until the facts have been heard which the petitioner alleged and offered to prove. I think that the judgment should be reversed."

Again in *Illinois Central R. Co.* v. *People of Illinois*, 163 U. S. 142, 41 L. ed. 107, it is said:

> "A state statute requiring a fast mail train carrying interstate passengers and the United States mail over an interstate highway established by authority of Congress, to delay the transportation of such passengesr and mails by turning aside from the direct interstate route, and running to a station 3½ miles away from a point on that route and back again to the same point, because such station is the county seat, for the interstate travel to and from which the railroad company furnishes other and ample accommodation, is an unconstitutional interference with and obstruction of interstate commerce and of the passage of the mails."

We respectfully submit, therefore, that the difference between an effort on the part of the state legislature to stop interstate trains at given points differs not in principle, but only in degree, from its asserted power to authorize a state agency to determine whether a railway company shall move its division point or shops, the latter power asserted being much more direct in its movement against the commerce power of the National Government than the former. If the legislature has the power to confer by statute upon a Corporation Commission the right to pass upon whether a railway company shall move its division point or shops, it would follow that it would have the same right to confer upon that commission the power to say at what point the railway company

shall originally establish its division point or shops, thus taking away from the railway company, undoubtedly, the power best to manage and conduct its business in behalf of the public and its stockholders.

In each of these latter cases Your Honors will take notice that if proper local facilities were furnished by the railway company, the argument was at an end. In this case it is shown by affidavits that proper facilities for serving the shipping and traveling public, for serving the patrons of the road, and for serving the people of Sapulpa, as patrons of the road, will be left after the division points and shops are moved. If service in the furnishing of facilities by a railway company at the points where the legislature seeks to stop interstate trains, is the answer to any attempted exercise of such power by the state, then certainly if reasonable facilities for service are left by a railway company at a place from which it desires to remove its division point and shops, the lack of power on the part of the legislature to touch this question at all is equally apparent. It is not questioned in this case that the removal of the shops and division point from Sapulpa will still leave ample railroad facilities to fulfill every duty which the railway company owes to anybody at that particular place, and the remark of Mr. Justice McReynolds in *St. Louis &*

San Francisco Ry. Co. v. *Public Service Commission of Missouri,* 254 U. S. 535, 65 L. ed. 389, becomes of tremendous importance in considering this view of the subject. The learned Justice said:

> "The fact of local facilities this Court may determine, such fact being necessarily involved in the determination of the federal question whether an order concerning an interstate train does or does not directly regulate interstate commerce by imposing an arbitrary requirement."

We contend that, as a matter of common knowledge, division points and shops have nothing to do with local facilities to be furnished by a railway company at a given point on its line, and that even if we are wrong in this, and the court cannot deduce from the language of this statute that it has nothing to do with local facilities, yet the undisputed facts in this case are that sufficient local facilities will be left if said division point and shops are moved.

We have endeavored to demonstrate to the Court that this state statute, for all the reasons above asserted, cannot stand. It seems to us that its invalidity is apparent when it is measured and judged by the adjudications of this Court. Finally we say, with reference to the face of this statute, that it does not disclose any purpose which is within the purview of the police power of the

state; that it arbitrarily and unjustly enters a field which is prohibited by the commerce clause of the Constitution of the United States; that it has given the power to the Corporation Commission to *operate* the business of railway companies. We have searched diligently the statutes and decisions of other states and we have found no counterpart to the state statute now under consideration. It seems that all the other sovereign states of this Union have been willing for railway companies to choose their own division points and locations for their machine and repair shops. The only state that has, by statute, touched it at all, so far as we can find, is the state of Texas, and inasmuch as a decision of this Honorable Court construing that statute is solely relied upon by the appellant in this cause, we beg now to consider the Texas statute and the decision of this Honorable Court with reference to the same.

The case in which these matters were involved is the case of *International & G. N. Ry. Co.* v. *Anderson County*, 246 U. S. 424, 62 L. ed. 807. The Texas act provided that a railway company chartered by the state, or owning or operating a line within the State of Texas, should permanently maintain its general offices at the place named in its charter, and if no certain place were named therein, at such place as it should have contracted

to locate them, otherwise at such place as it should designate. Also that it should maintain its machine shops and round houses at the place where it had contracted to keep them, and that if the offices, shops or round houses were located on a line of railway in a county that had aided such railway by an issue of bonds in consideration of the location being made, then such location should not be changed, and this should apply as well to a railway that may have consolidated with another, as to those that have maintained their original organization.

In the above mentioned case, in consideration of this statute, this Honorable Court found that such statute was expressly adopted by the International Company, which was, at that time, a purely intrastate company. The legislature had said where a railway company had made a contract to locate its general offices and shops at a particular place, this contract should be binding. In other words, the legislature of Texas conceived the idea that a contract, made by a railroad company to locate its general shops and offices at a particular place for a consideration or bonus could be made binding by legislative declaration, whether or not such contract was enforceable in the courts prior to the time the state gave the contract irrefutable and unchanging validity by express legislative fiat. We are not presumptuous enough

to attempt to make our construction of this decision binding upon this Honorable Court, and especially upon the distinguished Justice who wrote the opinion, but we feel we are justified in trying respectfully to ascertain, from all the facts and circumstances in the case, and from the utterances of the learned Justice, the meaning and scope of such decision.

We may say that if a legislature declares that a contract by a railway company to locate permanently its offices and shops at a particular point for a bonus received, can never be questioned, it declares something unsupported by reason or authority, and in conflict with all adjudicated cases in the State and Federal Courts which we have been able to find. The duty of a railway company in locating its offices, its shops, its division points, etc., is conditioned and measured by the obligation which the railway company owes to the public. A railway company is a *quasi* public corporation, and the rights of the public with reference to the use and enjoyment of such railroad and its service, are always paramount to the rights of any individual or any specific community.

Ever since the case of *Texas & Pacific Ry. Co.* v. *Marshall,* 136 U. S. 393, 24 L. ed. 385, the courts have, with one accord, agreed that a contract by a railway

company, permanently to locate its offices, shops or division points at a particular town, is either absolutely void as against public policy, or voidable at the instance of the railway company which made the contract, by showing that the interests of the public and of the stockholders of the railroad demand that a removal shall be had nontwithstanding the contract. This is the concensus of all the opinions, the only dividing line between them being that in some states the contract is held absolutely void as against public policy, while in others it is held voidable at the instance of the railroad by proving the facts above suggested.

In the Marshall case above cited, Justice Miller, in his opinion, distinctly said, that notwithstanding the contract made by the railway with the people, for a bonus, to maintain its shops at Marshall, Texas, permanently, an injunction would not lie against the railway company to restrain it from moving its shops. Justice Miller clearly was of the opinion that such a contract was void on the ground of public policy; that a railway company could not barter away, for a consideration, its paramount obligation to the public. This Marshall case has been cited with approval time and again by this Honorable Court, and its scope and meaning have never, that we can find, been criticised or changed by an opinion of this

Court, and in that case Justice Miller said that notwithstanding the contract permanently to locate, eight years was a reasonable time for the railway company to remain, and this satisfied the obligation of the contract.

In *Atlanta R. Co.* v. *Camp,* 130 Ga. 6, it is distinctly held that the contract of a railroad to maintain a station permanently is subordinate to the public duties of the railroad.

In *Edwards* v. *Goldsboro,* 140 N. C. 70, it was held that a contract between a city and property owners as to the erection and location of certain public buildings was void.

In *Florida Ry. Co.* v. *State,* 31 Fla. 510, it is held that a contract of a railroad to establish depots exclusively at particular points is void.

Oklahoma has, by her decisions, placed herself in line with those states which hold this character of contract void. Commencing with the case of *Enid Right of Way and Townsite Co.* v. *Lile,* 15 Okla. 317, we quote from the syllabus of such opinion:

> "Public policy requires that a railroad company chartered by the authority of the territory, should not be permitted to limit these franchises by contract which will place it in a position where it is not free to act in the location of its railroad stations

and depot at such points as the public convenience may require. And a contract which provides that for a consideration the location of a railroad station or depot by the railroad corporation shall be at a certain point, without regard to the question of the needs of the people, or the public convenience, is against public policy."

But whether we adopt the line of authority that holds this character of contract void, or the line that holds it voidable, as above indicated, no case, we think, can be found which holds it absolutely valid and enforceable as against the interests of the public and the interests of the owners of the railroad, and yet for some strange reason the legislature of Texas in effect validated absolutely a contract which every court in the Union that has touched the question held to be void or voidable at the time made.

It seems to us that this is the real gist of the International case cited aforesaid. The learned Justice, who delivered the opinion, stressed at some length the point that the complaining railroad in that case had not only made the contract alleged to keep its office and shops at Palestine forever, but had accepted this statute in its charter, and that this acceptance by the railroad of this statute foreclosed any right it had to dispute the obligation imposed by the statute. The learned Justice, in the body of the opinion, on page 816, uses this language:

"But, furthermore, when the office-shops act was on the statute book the plaintiff in error took out a charter under general laws that expressly subjected it to the limitations imposed by law. It is said that this does not make the plaintiff in error adopt an otherwise unconstitutional statute. But even if, contrary to what we have intimated, the act could not otherwise have affected those particular corporations, it was a law upon the statute books and was far from a mere nullity, and if it was made a condition of incorporation that this restriction should be accepted, the plaintiff in error cannot complain. * * * We agree with the state courts that the condition was imposed."

We can reach no other conclusion from a careful reading of this opinion than that the paramount thought in the mind of the Justice was that when a railroad company comes into a state, and by its charter, or by express terms, agrees to live under a certain statute, that it ought not to be permitted thereafter to attack said statute.

It may be that a legislature can force a railway company to adopt and obey a statute which validates a contract declared to be absolutely bad by some courts, and declared to be the subject of absolute avoidance by all other courts, but this kind of exercise of the sovereign power certainly furnishes much food for thought.

The learned Justice further in his observations said:

"The contention was made that the legislature of Texas could not make the railroad company adopt a statute otherwise unconstitutional."

It may be that a statute which, when attacked, will be declared unconstitutional, is not, as the learned Justice said, a mere nullity on its face, and that a railway company can agree with a sovereign to obey such statute although, under attack, it might prove unconstitutional.

This idea was considered and advanced by Federal Judge Hammond in *Louisville & N. R. Co.* v. *Railroad Commission of Tennessee*, 19 Fed. 679. The learned Justice indulged in the following observations:

> "Possibly, when incorporators ask a grant of franchises to enable the company to engage in interstate commerce, and, in consideration of the grant, agree not to charge more than a certain maximum, or to establish a certain schedule of rates for the transportation of commodities carried in such commerce, they would be bound by it; but not, be it remembered, because there has been a lawful exercise by the state of a municipal power to prescribe such rates,—for that would be none the less a regulation of interstate commerce, and as such void,—but because the incorporators, as owners, with power, in the absence of paramount regulation of law, to prescribe their own rates, have established these. *Concensus facit jus.*"

It would seem that the Justice who rendered the opinion in this case now under consideration, emphasized and gave great force to the fact that the Texas statute had been adopted expressly by the complaining railroad, and that this fact ought to estop it from com-

plaint or opposition. Again in the International case heretofore cited, the Court said:

> "The acceptance of the charter by the plaintiff in error disposed of every constitutional objection but one. It is said that the restriction imposes a burden upon commerce among the states, since the road concerned has expended and now is largely engaged in such commerce. The jury found that it imposed no such burden, upon an issue submitted to them in accordance with the desire of the plaintiff in error, although not in the form that is desired. So far as the question depended upon the testimony adduced, the verdict must be accepted; and although no doubt there might be cases in which this court would pronounce for itself, irrespective of testimony, whether a burden was imposed, we are not prepared to say that in this instance the state has transcended its powers. The burden, if any, is indirect."

It seems to us that the Court intended, by this suggestion, to mean that the verdict of the jury that no direct burden was cast on commerce under the facts of the case, was binding upon the railway company, and that a verdict of the jury in a case of that kind would not be disturbed by this Court unless the law, on its face, or the facts, showed a clear and undisputed burden upon interstate commerce. Of course, this Court reserved to itself the ultimate right and power to determine, in any case, whether a burden was placed upon interstate commerce, but the Court was content to let this case now under con-

sideration rest upon the verdict of the jury on facts which do not appear of record in detail in the decision, and which, therefore, we have not the privilege of examining.

In view of the peculiar facts and condition of this International case, we feel that it cannot be cited as an apposite authority for the broad contention made here by appellants. The facts in the present case which were pertinent to the inquiry as to the validity of the Oklahoma statute, show clearly that the Oklahoma statute seriously interferes with the interstate commerce of the Frisco Railway Company. The facts in the case show that this statute, most probably, was passed to meet conditions at Sapulpa. It appears to us to be an unreasonable statute; an arbitrary statute; a discriminating statute, and that it cannot stand the test of critical judicial review. If railway companies doing interstate business are required by Federal law to run their raliroads economically and to the best interest of the public, and if they are required, under the general law, to conduct said railroads to the best interest of the public, then to such railway companies must be committed the exercise of judgment and discretion in adopting the proper methods to bring about such results. If the states are permitted to take charge of railway companies by requiring such

companies to operate through narrow, restrictive, unnecessary and unreasonable regulations, the usefulness of such railroads, as great agencies of commerce, will be impaired and, sooner or later, destroyed.

Before we finally conclude, we beg again to call the attention of the Court to the great loss which would be entailed upon the St. Louis-San Francisco Railway Company if it might be compelled to remain at Sapulpa. The expense and the conditions surrounding the whole situation are succinctly as follows:

The railway company is now maintaining two great systems of terminal facilities including round house, yards and shops, within fourteen miles of each other. Owing to the immense volume of business necessarily transacted through the terminal facilities at Tulsa, the shops and other terminal facilities there cannot be abandoned. If the shops and round house and other facilities, not having to do with business originating or received at Sapulpa are abandoned and equipment now being used at Sapulpa moved to Tulsa, there will be eliminated the following unnecessary expense now being incurred: $11,000.00 per month in the locomotive and car department, $1,614.00 per month power plant expense, $500.00 per month water expense, $14,000.00 per month light and power expense. While the affidavits introduced in evi-

dence by appellee show that in all probability the amount saved by the contemplated move will be much greater than included in the above items, it is conclusively shown that a saving of the above amounts is certain. Thus, it is seen that if the company is compelled to maintain its present shops and terminal point at Sapulpa, there will be entailed a needless expense of more than $325,000.00 per annum.

We apologize to this Honorable Court for the length of this brief. We have, in good faith, attempted to define and enforce the positions taken by us. We, therefore, submit the case, invoking the favorable judgment of Your Honors.

Respectfully submitted,

E. T. Miller,
C. B. Stuart,
M. K. Cruce,
Ben Franklin.

Attorneys for Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 894.—October Term, 1926.

J. F. Lawrence et al., Appellants, *vs.* St. Louis-San Francisco Railway Co.	Appeal from the District Court of the United States for the Northern District of Oklahoma.

[May 31, 1927.]

Mr. Justice Brandeis delivered the opinion of the Court.

This is a direct appeal from a decree for an interlocutory injunction entered by the federal court for northern Oklahoma. The plaintiff below was the St. Louis-San Francisco Railway Company; the defendants the Corporation Commission of that State, its Attorney General and some citizens of Sapulpa. The bill was filed on January 11, 1927. The case was heard on January 19, by three judges under § 266 of the Judicial Code, as amended, and was decided on the same day. No opinion was delivered.

The Act of February 5, 1917, Compiled Oklahoma Laws 1921, §§ 3482-3485, § 5548, prohibits a railroad from removing its "shops or division points which have been located at any place in this State for a period of not less than five years without previously securing the permission of the Corporation Commission to make such removal." Railroad shops and a division point of the St. Louis-San Francisco system, have been located in Sapulpa, Oklahoma, since 1890. The Railway indicated a purpose to remove these shops and the division point to Tulsa. On February 19, 1917, the Corporation Commission issued, upon complaint of citizens of Sapulpa and upon notice to and hearing of the Railway, a temporary restraining order enjoining the removal. The Railway acquiesced in this order; the Commission retained jurisdiction of the cause; and neither party took any action therein for nearly ten years. In December, 1926, while the restraining order issued in 1917 was in

force, the Railway, without leave of the Commission and withou making any application in the cause, directed that the divisio point for passenger trains be changed in January, 1927, to Tulsa and it indicated a purpose to remove its shops to West Tulsa Thereupon, the complaining citizens of Sapulpa filed in the caus a motion, which, reciting these facts, prayed that the cause be se for hearing and that meanwhile the Commission prohibit the Rai way from making any change. The Commission set the hearin for January 17, 1927, and renewed the temporary restraining orde

The Railway brought this suit shortly before the day set fo the hearing by the Commission. The bill charges that the Okl homa Act violates the commerce clause, the due process clause an the equal protection clause; and that, hence, the Commission without jurisdiction in the premises. The sole prayer is that th defendants be enjoined "from compelling plaintiff to submit t the jurisdiction of the Corporation Commission in the severa matters aforesaid," that is, the proposed removal from Sapulp The decree is broader than the prayer. It enjoins the Commi sion from hearing the cause pending before it; from taking an other action therein; from making or enforcing any order r straining the Railway from removing its shops or division poi from Sapulpa, and specifically from putting into effect a conte plated passenger train schedule on January 23, 1927, the schedu being intended to facilitate the change of the division point. enjoins the other defendants from participation in any way in th proceedings before the Commission.

The decree disregards the requirement of § 19 of the Act October 15, 1914, c. 323, 38 Stat. 730, 738; United States Code Laws, Title 28, § 383, p. 909, "That every order for an injunctio shall set forth the reasons for the issuance of the same, shall specific in terms . . ." It does not declare that the Oklahom statute is unconstitutional; nor does it state any other reason wh the action enjoined is a violation of plaintiff's rights. It does n recite, even in general terms, that there is danger of irreparab loss It sets forth no fact from which such danger can be inferre It recites merely that the case was submitted on affidavits and th "the court having considered said affidavits and having hea argument of counsel both for plaintiff and defendants, is of th

opinion that the temporary injunction prayed for by plaintiff herein should be in all things granted."

Although proper practice demands that the provision thus prescribed by Congress be scrupulously observed, disregard of the statutory requirement concerning the form of the order did not render the interlocutory decree void. *Druggan* v. *Anderson*, 269 U. S. 36, 40. It must, however, be reversed, because the verified bill and the affidavits fail to supply that evidence of danger of irreparable injury to plaintiff which is essential to justify issuance of a temporary injunction. Indeed, it appears affirmatively from the allegations of the bill and the facts testified to in the affidavits that irreparable injury would not have resulted from the failure to issue a restraining order before serving notice on the defendants; that the interlocutory injunction should have been denied, except possibly as to the adoption of the new passenger train schedule on January 23, 1927; and that otherwise action by the court should have awaited the final hearing.

The only relief prayed for in the bill is that the defendants be enjoined "from compelling plaintiff to submit to the jurisdiction of the Corporation Commission in the several matters aforesaid." There is no prayer for general relief. No right or interest of the Railway would have been prejudiced by participating in the hearing before the Commission and awaiting the result thereof. The Railway would not thereby have waived its right to contest in the federal court the validity of the Oklahoma law. Nor would delay in making application to the federal court have subjected it to penalties under the Oklahoma law. The earliest date on which the Railway is definitely shown to have proposed to take any action falling within the prohibition of the Commission's order was January 23, 1927, when the Railway proposed to put into effect the new schedule involving change of the division point for passenger trains from Sapulpa to Tulsa. The hearing before the Commission had been set for January 17, 1927. It was clearly possible, and was perhaps probable, that the Commission would, after hearing argument on that day, have modified its order so as to permit the passenger schedule to go into effect. For the matter of serious concern to Sapulpa was the threatened removal of the shops and the freight terminals; not the proposed new schedule for passenger trains. Moreover, if the Commission had refused to permit the passenger

schedule to go into effect, the Railway would still have had ample opportunity before January 23 to secure from the federal court relief in that respect.

The broader permission to remove both the shops and the division point might also have been granted by the Commission if it had been permitted to proceed with the hearing set for January 17. The Railway asserts that the removal would result in an improved service and in economy in operation. If this appeared to be true, it was the duty of the Commission, under the Oklahoma law, to authorize the removal, unless thereby the health of the employees of the Railway or of their families was imperiled. It is not to be assumed that the Railway proposed to remove the shops to an unhealthy location. And it may not be assumed that the Commission would have disregarded its duty. *Grand Trunk Ry. Co.* v. *Michigan Railroad Commission*, 231 U. S. 457, 464-466; *Western & Atlantic R. R.* v. *Georgia Public Service Commission*, 267 U. S. 493, 496.

The facts alleged in the bill and testified to in the affidavits, show also otherwise that there was not danger of irreparable loss to plaintiff within established rules of equity practice. The Railway had for ten years acquiesced in the Commission's order prohibiting removal. There had not been, so far as appears, even a suggestion to the Commission that the Act under which the order issued was invalid or that the order was otherwise objectionable to the Railway. The advisability of the removal of the shops was a matter as to which the Railway officials had differed in judgment. The vice-president in charge of operation testified: "We should have changed many years ago." The president assured a committee representing Sapulpa in December, 1925, that the city was "the logical place for the terminal now located there, . . . that his company was considering the enlargement of the terminals . . . and that there was not reason for any anxiety on the part of the citizens of Sapulpa as to the removal of the terminals." In December, 1926, apparently, the Railway's officials concluded that, in view of the changed traffic and operating conditions, the time had come when the removal of the shops and division point from Sapulpa to Tulsa should be undertaken; and that, with a relatively small capital outlay at Tulsa, the removal would result not only in improved service, but also in an important saving in operating expenses. But there was no emergency requiring the issue of an

interlocutory injunction. To the Railway the matter was not one of vital concern. For it, time was not of the essence. The effect of the Commission's restraining order was merely to keep things in *statu quo* until the final hearing in the federal court. The interlocutory decree set the Railway free to remove the shops before the case could be heard on final hearing. By ending the *status quo* which had existed for ten years, it exposed the city and its citizens to danger of irreparable loss. The change subjected Sapulpa to grave and immediate peril. Removal of the shops which had been located in Sapulpa for a generation would probably affect property values seriously and might bring disaster in its train. It might ruin businesses. It might result in unemployment. It might compel many of Sapulpa's citizens to seek homes elsewhere. On application for an interlocutory injunction such considerations are of weight.

We have no occasion to determine whether the Oklahoma Act is obnoxious to the Federal Constitution. But as bearing upon the propriety of issuing the temporary injunction, the fact is important that the controversy concerns the respective powers of the Nation and of the States over railroads engaged in interstate commerce. Such railroads are subject to regulation by both the State and the United States. The delimitation of the respective powers of the two governments requires often nice adjustments. The federal power is paramount. But public interest demands that whenever possible conflict between the two authorities and irritation be avoided. To this end it is important that the federal power be not exerted unnecessarily, hastily, or harshly. It is important also that the demands of comity and courtesy, as well as of the law, be deferred to. It was said in *Western & Atlantic R. R.* v. *Georgia Public Service Commission*, 267 U. S. 493, 496, that a law of a State may be valid which prohibits an important change in local transportation conditions without application to the state commission, although the ultimate authority to determine whether the change could or should be made may rest with the federal commission. And it was there said that the "action of the Company in discontinuing the service without a petition" to the state body was "arbitrary and defiant." Compare *Henderson Water Co.* v. *Corporation Commission*, 269 U. S. 278. To require that the regulating body of the State be advised of a proposed change seriously affecting transportation conditions is not such an obvious interference

with interstate commerce that on application for a preliminary injunction the Act should lightly be assumed to be beyond the power of the State.

The decree recites that a restraining order was issued on the filing of the bill. So far as appears, the court also disregarded in issuing it the requirement of § 17 of the Act of October 15, 1914, Code, Title 28, § 381, p. 909. We think that § 17 applies to suits brought under § 266 of the Judicial Code.[1] Section 17 provides: "Every such temporary restraining order . . shall define the injury and state why it is irreparable and why the order was granted without notice . ." It provides also: "No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon." Such facts do not appear to have been shown. They are not alleged in the verified bill; and the affidavits in support were not filed until the hearing on the interlocutory injunction.

The purpose of Congress in requiring that "every order for an injunction shall set forth the reasons for the issuance of the same," was in part to ensure deliberation, and thus minimize the chances of error. It was in part to prevent or allay the irritation naturally incident to interference by injunction with the action of the state government. Congress did not require the court to supplement the recitals in the decree by a fuller statement in an opinion. The importance of an opinion to litigants and to this Court in cases of this character was pointed out in *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 675. The importance is even greater where the decree enjoins the enforcement of a state law or the action of state officials thereunder. For then, the respect due to the State demands that the need for nullifying the action of its legislature or of its executive officials be persuasively shown.

Reversed.

---

[1]Section 17 took the place of § 263 of the Judicial Code, which was of general application. The last sentence of § 17 (omitted from § 381 of Title 28 of the Code) reads: "Nothing in this section contained shall be deemed to alter, repeal or amend section two hundred and sixty-six" of the Judicial Code. In requiring specific findings of irreparable damage in the issuance of restraining orders, no alteration, repeal or amendment of § 266 was made.